87-577

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ARDEN A. ANDERSON, *et al.*,
Petitioners,

vs.

THE STATE OIL AND GAS BOARD OF ALABAMA, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF ALABAMA

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QUESTIONS PRESENTED

1. Whether a property owner whose minerals are forcibly pooled through administrative unitization proceedings has a 14th Amendment due process right to compulsory discovery of documents relevant and material to a just allocation of the unit interests?

2. Whether the appellate court erred in holding that the administrative board's refusal to subpoena specific documents did not violate petitioners' due process rights because the production of the documents "...would not necessarily have changed the Board's decision."

LIST OF PARTIES

This petition grows out of an administrative proceeding in which over four thousand parties were noticed as being affected. On appeal to the Circuit Court of Mobile County, all of these parties were again noticed as required by Alabama statute. On appeal from the Circuit Court to the Court of Civil Appeals of Alabama, the Appellants, Cross-Appellants, Appellees and Cross-Appellees were as follows:

Appellants and Cross-Appellees:

The State Oil and Gas Board of Alabama[1]

Getty Oil Company

Paul M. Brown, et al.[2]

Exxon Corporation[3]

George Radcliff

Appellees and Cross-Appellants:

Arden A. Anderson, et al.[4]

Hatters Alabama Company, et al.[5]

Petitioners herein are Arden A. Anderson, et al., and all others are named as Respondents. The interest of Respondents, Hatters Alabama Company, et al., have been aligned with Petitioners in all the earlier proceedings.

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[1] Including its chairman and members in their official capacities, Dr. Ralph Adams, Matthew S. Metcalfe (successor to Henry A. Leslie) and Gaines C. McCorquodale.

[2] Paul M. Brown; PaulnH. Elkins; Eve Adams; Allen Abrams; Paul G. Abrams; Leonora Abrams; Frances F. Brown; Maxine Elkins; Mel Elkins; Judith A. Elkins; Frances W. Elkins; Jack Elkins; Etta Friedman; Samuel A. Friedman; Bobette B. Friedman; Lowell J. Friedman; Jack Goldfarb; Meyer David Goldfarb; Leonora Goldfarb; Mit-

chell Goldfarb; Daniel Goldfarb; Shelley R. Goldfarb; Ralph Gordon; Susan K. Gordon; Edna A. Gwosdow; Elizabeth L. Kahn; Rose F. Kaplan; Peter Klein; Nina Klein; Stephen H. Klein; Harry Klein; Peggy Klein; Paul May; Wallace Musoff; Lynn Rittenband; David N. Stahl, Jr.; Ruth G. Stahl; Marc L. Peterzell, as Trustee of the Paulette May Hertz Trust; Sidney Gelfand, as Trustee of "The Sidney William and Lila Gelfand Trust"; Paul H. Elkins, Judith A. Elkins and Sidney Gelfand, as Trustees under the Trust for the Benefit of Lisanne Elkins; Paul A. Elkins and Sidney Gelfand, as Trustees under the Trust for the Benefit of David A. Elkins; Nina Klein and Peter Klein, as Trustees under that certain Trust entitled "Klein Children's Trust"; Hazel Hinson Butler; the Board of School Commissioners of Mobile County, Alabama acting through their Board; Howard F. Mathis, III as Member; Norman G. Cox, as Member; Ruth F. Drago, as Member; Dr. Robert W. Gaillard, as Member; and Judith A. McCain, as Member.

[3] Though not noticed as Appellant or Appellee, Exxon Corporation briefed and argued as Appellant.

[4] Arden A. Anderson, Dominex, Inc., Godfrey, Mongoven, & Carlisle, J. B. Johnston, Jr., Louis Mullen, C. E. Locklin, Jr., Hayes Martin, Emile A. Meyer, Jr., Fred D. Meyer, I. H. Northrop, Jr., R. C. Northrop, I. H. Northrop, Sr., Vonceil Northrop, Ted. J. Ouzts, Ralph Abrahamsen, James C. Bassett, Garwood A. Braun, Kelly Van Brock, Cecil Ott Carraway, Carl D. Cassels, Jewell M. Cassels, Leon Cassels, Jessie Clay Cogburn, Jr., Robert A. Cogburn, Louise P. Cogburn, Grace Dansby, Sherril Dansby, David S. Ferguson, Verlyn M. Giles, Ward G. Godfrey, Jr., Harold Goldstein, Julia Goldstein, Michael Granger, Jane Granger, Donald E. Grant, James C. Griffin, H. Finn Groover, Jr., Patricia Harvey, Robert M. Hoffman, Eric H. Johnson, Roger Kaufman, J. D. Boone Duersteiner, Albert Lawton Langford, George Robertson Langford, Jr., Paul Robert Larson, Richard M. Lee, Ryals E. Lee, Robert B. Lester, John R. Lewis, Ellen P. Lewis, Richard B. Locher, Sr., Donald E. Lonhart, Sanford B. Lovingood, Stephen R. Lowry, MAF Partnership, Sarah C. Shaw, Clifford K. Madsen, Mary K. Madsen, Robert Andrew Miller, Earl W. Montgomery, Dale K. Ouzts, William M. Parker, Robert T. Peters, Jr., CT Partnership, Jimmy T. Patronis, J. M. Perkins, Ralph F. Pigott, Willie A. Pigott, Alvord Pitts, Zelma Pitts, Martha D. Pitts, James Edwin Pitts, C. J. Porter, Marion W. Porter, Stanley Bruce Powell, John H. Quinn, Leo Rich, Rodney L. Rich, Restaurant Accounting & Management, Inc., R. Gary Shields, George Francis Slade, Derwin B. Smith, II, Kathryn Smith Trust, 1965, Ronald C. Smith, E. Ray Solomon, Norman F. Spafford, M.D., Daniel C. Spr-

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inger, Fred L. Standley, James Don Stockton, J. Daniel Stone, Gerald P. Tinney, Daniel W. Toohey, Harry M. Walborsky, Paula L. Walborsky, William C. Webb, George H. Weilder, Lawrence Leroy Wells, Harold D. Wildkins, Jr., James O. Williams, Connie D. Smith, Iris Lafaye Smith, Jeanna C. Smith, Lewie F. Smith, Lewie J. Smith, Sharon L. Smith, J. M. Duvall, Dan McKenzie, Diamond Oil International (successor to Amax Petroleum Corporation and Britoil Ventures, Inc.).

[4] Hatters Alabama Company, LeBoc Mobile Company and Sabine Corporation.

5(a) Getty Oil Company is a wholly owned subsidiary of Texaco Inc. which has the following affiliates and other subsidiaries:

Texaco U.S.A.
Arabian American Oil Company
Aramco Services Company
Caltex Petroleum Corporation
Deutsche Texaco A.G.
Texaco Africa Limited
S. A. Texaco Belglium N.V.
Texaco Brasil S.A. Produtos De Petroleo
Texaco Butadiene Company
Texaco Canada Inc.
Texaco-Cities Service Pipe Line Company
Texas-New Mexico Pipe Line Company
Kaw Pipe Line Company
Texaco Chemical Company
Texaco Development Corporation
Texaco Guatemala Inc.
Texaco Europe
Texaco Limited
Texaco Latin America/West Africa
Texaco Middle East/Far East
Texaco Panama Inc.
Texaco Puerto Rico Inc.
Texaco Services (Europe) Limited
Texaco Trinidad, Inc.
Texas Petroleum Company
Texaco Oil Trading and Supply Company
The Texas Pipe Line Company

5(b) Exxon Corporation has the following affiliates and subsidiaries:

Arabian American Oil Company
Aramco Services Company
Trans-Arabian Pipe Line Company (TAPLINE)
Beb-Gewerkschaften Brigitta Und Elwearth
Betriebsfuhrungsgesellschaft mb4 Hannover
Dansk Esso A.S.
Esso Africa, Incorporated
Esso A.G.
Esso Austria A.G.
Esso Braslleira De Petroleo S.A.
Esso Eastern, Incorporated
Esso Europe, Incorporated
Esso Exploration, Incorporated
Esso Exploration and Production UK Limited
Esso Italians S.p.A.
Esso Nederland, B.V.
Esso Norge A.S.
Esso Exploration and Production Norway, Incorporated
Esso Petroleum Company Limited
Esso Societe Anonyme Francaise
Esso Sociedad Anonima Petrolera Argentina
Esso Standard Oil S.A. Limited
Esso Standard Oil (Uruguay) S.A.
Esso Switzerland
Esso Tankschiff Reederel GmbH
Esso Transport Company, Inc.
Esso UK plc
Exxon Chemical Company
Exxon Chemicals Americas
Exxon Coal Resources USA, Incorporated
Exxon Gas System, Incorporated
Exxon International Company
Exxon Pipeline Company
Exxon Production Research Company
Exxon Research and Engineering Company
Exxon Shipping Company
Friendswood Development Company
Gilbarco Inc.
Imperial Oil Limited
International Petroleum (Colombia) Limited
Interprovincial Pipe Line Limited
Iranian Oil Participants Limited
Lago Oil and Transport Company, Ltd.

Monterey Pipeline Company
Nederlandse Aardolie Maatschappij B.V.
Oy Esso Chemical Ab
Petroleum Casualty Company
Plantation Pipe Line Company
Svenska Esso A.B.
Societe Esso De Recherches Et D'Exploitation Petrolieres S.A. (ESSO REP)
Esso Middle East
Exxon Minerals Company
Reliance Electric Company
Deutsche Transalpine Oelleltune GmbH
Esso Espanola, S.A.
Esso Italiana S.p.A.
Esso Nederland B.V.
Esso Petroleum Company, Limited
Esso Portuguesa, S.a.r.l.
Esso Standard Libya Inc.
Gewerkschaft Brigitta
Iranian Oil Participants Limited
Iraq Petroleum Company, Limited
N.V. Nederlandse Gasunie
Societe du Pipeline-Sud-European

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THE STATE OIL AND GAS BOARD OF ALABAMA, *et al.*,
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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF ALABAMA

The petitioners pray that a writ of certiorari issue to review the decision of the Court of Civil Appeals of Alabama entered on January 14, 1987.

OPINION BELOW

The opinion of the Court of Civil Appeals of Alabama is reported as *State Oil and Gas Board of Alabama v. Anderson*, 510 So.2d 250 (Ala. Civ. App. 1987), and is reproduced in Appendix A.

The decision and order of the Circuit Court of Mobile County, Alabama, and of the State Oil and Gas Board of Alabama, were not officially reported, and are reproduced in Appendices B and C.

The opinion of the Court of Civil Appeals of Alabama on petition for rehearing comprised minor corrections and is officially reported with the initial opinion. It is reproduced in Appendix D.

The Order of the Supreme Court of Alabama, denying writ of certiorari, styled *Ex Parte: Arden A. Anderson re: State Oil and Gas Board of Alabama v. Arden A. Anderson, et al.*, ____ So.2d ____ (Ala. 1987) is not yet reported, and is reproduced in Appendix E.

JURISDICTIONAL GROUNDS

The judgment of the Court of Civil Appeals of Alabama was entered on January 14, 1987. A timely petition for rehearing was denied and opinion corrected on February 18, 1987. A timely petition to the Supreme Court of Alabama for Writ of Certiorari was filed, and denied on July 17, 1987. No petition for rehearing to the Supreme Court of Alabama is allowed. This petition for certiorari was filed within 90 days of July 17, 1987. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The federal constitutional provision interpreted by the Court of Civil Appeals of Alabama is Amendment XIV of the Constitution of the United States, Section 1, which reads in pertinent part

> "No state shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Hatter's Pond Field was established by the State Oil and Gas Board of Alabama (the Board), and by 1984 there were thirteen gas condensate wells in the field, each producing from a tract comprising a full governmental section. Getty Oil Company (Getty) operated twelve of the thirteen tracts. Petitioners Arden A. Anderson, et al.[6] (Anderson) owned working interest in the only tract (Section 28) not operated by Getty. Subject to the State conservation statutes[7], each tract under primary recovery operated competitively with all other tracts.

On February 10, 1984, Getty petitioned the Board requesting that the thirteen tracts be unitized for the purpose of conducting secondary recovery by artificially maintaining pressure in the producing Smackover and Norphlet formations. Getty estimated that four billion dollars of oil and gas could be recovered under unitization. Because secondary recovery methods purposely disturb the flow and place of production of oil and gas, the Rule of Capture[8] does not justly account to the mineral owners the proceeds of production. Inequitable allocation in unitization amounts to a taking without just compensation.

Under Alabama law, an owner of a unitized interest no longer gets its share of production of the well on its tract, but gets

> ... an allocation ... based on the relative contribution which each such tract ... is expected to make ... to the total production of oil or gas ...[9]

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[6] One of the petitioners had a small interest in one of the Getty operated tracts.

[7] Ala. Code § 9-17-1 et seq. (1975)

[8] Williams and Meyers, *Oil and Gas Law* § 204.4 Vol. I p. 55 (1986)

[9] Ala. Code § 9-17-83(3) (1975)

The allocation formula is the most difficult problem in unitization[10] because it requires a substantive due process factual determination that, under the formula, an owner in the unit will receive a percentage of the unit proceeds equal to the percentage that his minerals contribute to the total production. This factual determination is typically unique to each field and is made from an analysis of the specific characteristics of the pool or reservoir to be unitized.

Anderson opposed the allocation formula in the Getty petition on the basis that the proposed unitized formation comprised several *separate* reservoirs and that the proposed formula would be technically inapplicable and practically inequitable in a unit where parts of the formation were not in pressure communication with the other parts.[11] Anderson's experts estimated that Section 28 would receive $270,000,000 less than it was due under the proposed formula.

Anderson on March 20, 1984 requested the Board by separate petition to require that certain tests be made in the field before considering unitization. On March 21, 1984, Anderson requested the Board to order production of certain records of Getty; and on March 27 requested that Getty be required to submit its representatives for deposition for the purpose of identifying relevant evidence.

In its first day of hearings on Getty's petition, the Board denied all of the relief requested by Anderson, without a hearing. On petition for a Writ of Mandamus to the Board, the Cir-

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[10] Myers, *The Law of Pooling and Unitization,* § 4.02, p. 109 (1967)

[11] Anderson alleged that separate tracts, not in pressure communication with the main reservoir, would be given credit in the future for gas already produced or for gas which could not be produced.

cuit Court of Tuscaloosa County ordered the Board to hear Anderson's petition.

The Board consolidated Anderson's petition with Getty's and on June 29 and 30, 1984 heard Anderson's evidence supporting a request for tests and for discovery. After hearing the request for discovery of evidence necessary and relevant to the hearings, the Board proceeded with the hearings and refused to rule on the request until after all of the hearings were over.

On July 3, 1984, Anderson requested that the Board order Getty to supply some specific documents prepared by and wholly controlled by Getty. While Anderson had not seen the documents, it knew of their existence and had compelling reasons to believe that these documents would prove that *Getty's own experts* believed there were separate reservoirs in the Hatter's Pond Field. Because of Getty's control over twelve of the thirteen drilling tracts, Anderson had no practical way of obtaining this same information. If the documents in fact contained the information believed to be in them, it would not just shift the relative weights of the conflicting evidence; it would destroy the technical basis for the allocation formula in the Getty Petition.

The Board had specific power to subpoena the documents[12], but refused to do so. The Secretary to the Board, on request of Anderson, admitted that he knew of no instance in the Board's entire history[13] where the Board had exercised its power to subpoena documents.

After ten days of hearings and argument, spanning June, July and August 1984, the Board granted the petition of Getty and denied all relief sought by Anderson.

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[12] Ala. Code § 9-17-18 (1975)

[13] The Board was created in 1945. Ala. Code § 9-17-1 et seq. (1975)

Anderson appealed to the Circuit Court of Mobile County, and on May 5, 1986, the Circuit Court invalidated the Board's order, and remanded the cause with instructions, among other things, to provide all participants procedural due process as pertains to discovery.

The Board, Getty, and others appealed the Circuit Court's order to the Court of Civil Appeals of Alabama, which Court reversed the Circuit Court and reinstated the order of the Board.

Anderson sought and was denied rehearing in the Court of Civil Appeals of Alabama; and sought and was denied certiorari by the Alabama Supreme Court.

MANNER OF RAISING CONSTITUTIONAL QUESTION

In its request for discovery dated March 27, 1984 (BR100928 et seq.)[14] Anderson petitioned the Board in part as follows:

I

> Petitioner's own exhibits show that the hydrocarbons to be allocated by the Board are worth in excess of Four Billion Dollars. That the enormity of the amount at issue requires that all facts be made available to the Board; that interested parties should have an opportunity to develop facts even at the expense of reasonable delay; that the petitioners Getty Oil Company have proposed an allocation without fully divulging facts known to itself; that the primary operators in the unit owe a duty of good faith to those interest owners who are disproportionately disadvantaged because they do not have tract-wide interests.

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[14] BR represents the record of the administrative hearing.

II

That discovery requested by your petitioner, and tests requested by your petitioner are reasonable requests; the information cannot otherwise be ascertained; and that failure to provide the discovery and tests deprives your petitioners of due process. The right to examination and cross-examination at hearing will be relatively meaningless if the petitioner for unitization can control what is submitted in to evidence while withholding evidence material to the issues. The Board itself will be deprived of substantial and jurisdictional evidence without the relief requested.

III

That "opportunity" afforded by section 41-22-12(d) of the *Code of Alabama,* 1975, will be denied if the hearing on this matter is not continued. The "rules" set out in the Supervisor's letter of February 17, 1984, require all exhibits to be submitted concurrently, without opportunity to examine their preparers except at the hearing itself.

Even in the most simple action at law, involving $5,000.00; our law affords ample opportunity for discovery in order to prevent "ambush" at trial, and allow each party an *adequate* opportunity for cross-examination.

In such a matter as this, discovery and a reasonable time in which to perform it, should be inherent rights.

On June 14, 1984, Anderson filed a "response" in the nature on an answer to Getty's position stating (p. 2)

These petitioners are entitled to full discovery in these proceedings as guaranteed under the United States Constitution and the Constitution of the State of Alabama, to be implemented by the Board or any member thereof pursuant to Section 9-17-8(18), Code of Alabama.

and (p. 15)

> Unitization of Hatters Pond Field on any basis must be attended by discovery practices which meet the requisites of due process under both the United States Constitution and the Alabama Constitution. (BR101027)

After the hearings and prior to the Board's order, Anderson wrote in brief (BR101287):

> Getty refuses to run the tests and the State Oil and Gas Board has not yet required them to do so. Getty Oil Company also refuses to furnish the owners in Section 28 with the studies which Getty Oil Company itself has made regarding the fact that its edge wells are in separate pools from the main reservoir in which the Section 28 well is located, and that the edge wells have a limited drainage radius and that they are severely depleted at this time. Although all the evidence presented to this Board confirms those facts, Getty Oil Company continues to deny it while the limited glimpse which we have obtained of their own studies do, in fact, confirm it. Getty Oil Company is attempting to trade the owners in Section 28 a "pig in a poke" and it is the duty of this Board to require Getty Oil Company to open the "poke". Due process entitles the owners in Section 28 to the right to look in the poke, and this Board has a duty to enforce that right.

The Board, in its Order 84-382, held (BR101462)

> The information that Getty Oil Company refused to provide those parties is not necessary to determine the issues presented before the Board.

On appeal to the Circuit Court of Mobile County, Alabama, Anderson included in its grounds for appeal, the following:

III

> The Order appealed from is due to be reversed and the cause remanded because:

A. The order is unconstitutional in that

1. The conduct of the hearing on which the Order was based denied your Petitioner both Federal and State Constitutional guarantees of due process of law, substantive and procedural.

2. The order confiscated property worth hundreds of millions of dollars and gave Petitioners and others credit or compensation therefor worth less than half of the property taken.

3. The Petitioners were denied a fair hearing in that the Board refused on request, to issue subpoenae for evidence which was identifiable, and critically relevant to the issues before it; and the Board refused other necessary reasonable requests for discovery.

Anderson among other things requested the following relief:

C. Reverse and remand this cause to the State Oil and Gas Board of Alabama, with instruction to:

1. Afford petitioners due process in the acquisition and presentation of evidence;

The Circuit Court of Mobile County, in its order made the following finding of fact

7. On June 7, 1984, on petition by Anderson, the Circuit Court of Tuscaloosa County, Alabama issued a writ of Mandamus to the Board ordering it to hear Anderson's petitions for pressure tests and discovery. (R101022). The Board did hear Anderson's request for pressure tests and discovery, but refused to rule on that request until all hearings were had (for which the discovery had been

requested), and finally denied the requested discovery and tests on October 9, 1984, when Getty's petition was approved in Order No. 84-382 (R101424). Fraud has been alleged on the part of Getty with regard to discovery, however, the Court finds no evidence to support these allegations.

8. The Court finds that, as to the issues which affected Anderson, Getty generated all records on which the Board made its decision in Order No. 84-382. The Court further finds that after general and specific requests for identifiable, material and relevant discovery by Anderson, the Board denied Anderson the right to compulsory production of documents held by Getty (R204359, et seq., R204763 et seq.). The Court also finds as a fact that the Board has never exercised its statutory authority to issue such subpoena as requested by Petitioners. (R206710, August 10, 1984).

9. The Board denied discovery in part because, it said, that Anderson was dilatory in requesting it. The Court finds that over 90 days elapsed from Anderson's first request for pressures and discovery until the first day of substantive hearings on Getty's petition, and that over 200 days elapsed from request before the Board ruled on the request.

In its instructions on remand the Circuit Court of Mobile County addressed the due process issue first.

5. That this cause is hereby remanded to the State Oil and Gas Board for further proceedings consistent with this Order and the Findings of Fact and Conclusions of Law; and on remand the State Oil and Gas Board shall:

(a) provide all participants in the administrative hearing procedural due process as pertains to discovery;

The issue was raised by Respondents in the appeal to the Court of Civil Appeals of Alabama, and that Court dealt with the issue as follows:

> Thus, even accepting as true appellees' argument that the information withheld by Getty would give credence to their position that the field consisted of separate mappable reservoirs, extensive testimony was given and numerous supporting documents were offered into evidence to support the Board's finding of a single reservoir. At most, therefore, the requested information would have been merely cumulative of that evidence supporting appellee's position that separate reservoirs existed in the field. The Board would still have been required to make a decision based on conflicting evidence. In other words, the required production of the information sought by appellees would not necessarily have changed the Board's decision. Consequently, we do not find a due process violation by the Board in this aspect of the case.

On petition to the Supreme Court of Alabama, Anderson listed as a ground for review:

> C. The Court of Civil Appeals found that your petitioners were not denied procedural due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and the Sixth and Thirteenth Sections of the Constitution of Alabama under these circumstances:
>
> 1. Getty Oil Company owned twelve of the thirteen operating units to be brought into the Hatter's Pond Field, and Getty Oil Company alone had possession of non-public data about these tracts;
>
> 2. Getty Oil Company alleged and represented to the Board that Hatter's Pond Field comprised *one* reservoir; an allegation upon which the purported validity of the participation formula rose or fell.

3. Your petitioners, along with others alleged and presented evidence that Hatter's Pond Field comprised multiple, separate reservoirs; a position which if accepted would render the participation formula patently invalid;

4. Your Petitioners own interest in the one tract which Getty Oil Company did not operate, and petitioners had no access to *any* data in the rest of the units except what Getty Oil Company voluntarily disclosed;

5. Your Petitioners found in transmittal letters prepared by Getty Oil Company, references to studies prepared by their own employees, which studies *apparently* adopted as a fact the recognition that there were separate reservoirs in the Hatter's Pond Field; these studies were identified and dated;

6. The State Oil and Gas Board denied your petitioners all requests of any kind for compulsory discovery; and denied a specific request for these studies that were identified by name and date;

7. The discovery requested would not have simply added evidence for petitioners but would have contradicted and destroyed the credibility of the position urged by Getty Oil Company and adopted by the Board.

Petitioners believe that this case presents an opportunity for an initial construction of the procedural due process clause of the state and federal constitution as it relates to the right of a litigant in an administrative proceeding to a minimum right to compulsory discovery.

Thus prior to the hearing before the Board in the first instance, and at every stage of the proceedings thereafter, the issue has been timely and properly raised.

REASONS FOR GRANTING THE WRIT

Unitization of the property of non-consenting owners is fairly analogous to the condemnation of smaller areas of the unit, compensated by the award of a percentage of the whole. Thus, while unitization is generally achieved under conservation statutes by state administrative agencies, the process is a traditional police power action requiring just compensation. However, under the premature development of administrative remedies, federal and state courts have been reluctant to define traditional protection for the administrative litigant.

In the administrative proceeding below Anderson attempted to obtain evidence of the worth of other properties, with which his own would be unitized, in order to litigate for just compensation. The administrative board not only denied Anderson all right to compulsory pre-hearing discovery of relevant and material evidence, but when some such documents were otherwise identified, the Board refused to exercise explicit statutory authority to compel production of those documents.

1. This Case Presents An Opportunity To Define The Due Process Rights Of Administrative Litigants In The Areas Of Pre-Hearing Discovery And The Compulsion Of Production.

This court has approached this question in narrower contexts. In construing the use of the Freedom of Information Act, 5 U.S.C. § 553 (1976 ed.), to obtain statements of potential witnesses to an NLRB proceeding the court commented on discovery practice before that agency, but did not have that practice as an issue before it. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978). Commenting on the Fifth Circuit's expanded view of the availability of pre-hearing discovery, this court intimated "...no views as to the validity..." *Id.* at 237, n.16.

In *Harris v. Nelson*, 394 U.S. 286 (1968), this court held that while Rule 33 of the Federal Rules of Civil Procedure was not

applicable to habeas corpus proceedings, the District Court had "plenary" power to use suitable discovery procedures, including interrogatories, if necessary to help the court dispose of the matter as justice and the law require. *Id.* at 290, 292.

In *Miner v. Atlass,* 363 U.S. 641 (1960) the court considered the use of oral depositions for discovery purposes in admiralty, and held that they were unauthorized by any "inherent power" in the federal trial court.

The Circuits of the Courts of Appeals are split, the Fifth Circuit and the Fourth Circuit stating that

> . . .under some circumstances the Board's decision not to provide discovery may result in unfairness.

Firestone Synthetic Fibers Co. v. NLRB, 374 F.2d 211, 214 (4th Cir. 1967), quoted in *NLRB v. Rex Disposables, Div. of DHJ Industries, Inc.,* 494 F.2d 588, 592 (5th Cir. 1974).

The Second Circuit held that

> It is well settled that parties to judicial or quasi-judicial proceedings are not entitled to pre-trial discovery as a matter of constitutional right.

NLRB v. Interboro Contractors, Inc., 432 F.2d 854, 858 (2d Cir. 1970).

The Seventh Circuit has likewise held that

> there is no basic constitutional right to pre-trial discovery in administrative proceedings.

Silverman v. Commodity Futures Trading Com'n, 549 F.2d 28, 33 (7th Cir. 1977).

The Supreme Court of California has held that, even though its administrative procedures act does not allow for depositions for discovery purposes, it is left to the courts

> . . . the question whether modern concepts of adjudication call for common law rules to permit and regulate the use of the agencies' subpoena power to secure pre-hearing discovery.

Shiveley v. Stewart, 55 Cal. Rptr. 217, 421 P.2d 65, 67 (1976). In that case "due process" was invoked to allow what the statute didn't provide.

Because of inapposite factual bases, prior state and federal decisions have not addressed the traditional rights involved when property is force-pooled or condemned for conservation purposes. Prior rulings in tax, criminal, quasi-criminal, labor, contract - administration, immigration, and license cases have not considered the kind of case giving rise to this petition.

Massive economic losses are alleged in this administrative case, yet no compulsory discovery of any kind was allowed.[15] At the same time, an automobile accident victim in Alabama, alleging damages in circuit court of five thousand dollars or more, is entitled to a full panoply of pre-hearing discovery and compulsory process for trial. *Alabama Rule of Civil Procedure,* Rules 26-37.

Administrative litigants typically have no *de novo* appeal, and on review are faced with an overwhelming presumption of correctness in the administrative agency or board. Hearing procedures are purposefully informal, and evidence is reviewed for admissibility by lay triers of fact. Boards dealing with technical matters are given an extra measure of discretion. Faced with the lack of many traditional procedural safeguards, what due process right does the administrative litigant have to at least discover his opposition's evidence? This is a federal question of paramount importance which has not but should be settled by this Court.

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[15] The second question deals with the Board's refusal to require production of known, relevant evidence, withheld by Getty.

2. The State Appellate Court's Holding Of Harmless Error Is In Conflict With The Decisions Of This Court.

In *Coe v. Armour Fertilizer Works,* 237 U.S. 413, 424 (1914), this Court wrote:

> To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.[16]

The Eighth Circuit, in *NLRB v. Burns,* 207 F.2d 434 (8th Cir. 1953), considered a defense by the Board, to rejection of admissible evidence, as harmless error. That court said at p. 436, quoting from *Donnelly Garment Co. v. NLRB,* 123 F.2d 215, 224 (8th Cir. 1941)

> "That a refusal by an administrative agency such as the National Labor Relations Board to receive and consider competent and material evidence offered by a party to a proceeding before it, amounts to a denial of due process is not open to debate. *** That the Board would or might have reached no different conclusion had the rejected evidence been received, is entirely beside the point. The truth is that a controversy tried before a court or before an administrative agency is not ripe for decision until all competent and material evidence proffered by the parties has been received and considered."

Certiorari to the state appellate court will accomplish more than just the correction of error; it will involve correction of concept. The Court of Civil Appeals reasoned thus: (a) there was evidence of separate reservoirs by Anderson, and evidence of a single reservoir by Getty; (b) since there was a conflict in the

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[16] Quoted and approved in *Fuentes v. Shevin,* 407 U.S. 67, 87 (1972)

evidence the Board could rule either way; (c) the denial of more evidence by Anderson (out of Getty's own files) of multiple reservoirs "...would not necessarily have changed the Board's decision."

This reasoning contemplates only a slight shift in the relative weights of the evidence; it ignores the possible impeachment of their own witnesses by prior inconsistent findings from their own files.

Because the Board below did have authority to subpoena the documents requested by Anderson, this issue narrows to the question of whether it had discretion to not subpoena the documents just because their production and admission would not necessarily have changed their decision. This is not an admissibility question; without compelling production and seeing the evidence, how could the Board fairly and impartially decide its impact?

The decision below says that a board may reject competent evidence without seeing it. This concept flies in the face of this Court's view of due process.

CONCLUSION

The due process right to fairly litigate traditional property controversies in the modern administrative proceeding are at stake in this cause. The writ should issue to establish and preserve those same rights taken for granted in formal judicial settings.

Respectfully submitted,

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APPENDIX

APPENDIX A

STATE OF ALABAMA — JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
OCTOBER TERM 1986-87

Civ. 5403-X

The State Oil and Gas Board of Alabama, Dr. Ralph Adams, as chairman, etc., et al.

v.

Arden A. Anderson, et al.

Appeal from Mobile Circuit Court

BRADLEY, Judge

This is a State of Alabama Oil and Gas Board case.

On May 31, 1982 Getty Oil Company (Getty) first petitioned the State of Alabama Oil and Gas Board (the Board) to unitize Hatter's Pond field, a gas condensate reservoir located in Mobile County. Unitization was sought by Getty as unitization is a precondition to the implementation of secondary recovery operations in a field.

Secondary recovery involves the recovery of hydrocarbons by artificially maintaining pressure throughout the reservoir. Secondary recovery, as compared to primary recovery, is desirable because through pressure maintenance more hydrocarbons can be retrieved from the reservoir. Additionally, interest owners like Getty, operating in a unitized field and engaging in secondary recovery, are allocated revenues pursuant to a participation formula rather than according to the amount of hydrocarbons retrieved from their individual well or wells.

Pursuant to section 9-17-83(3), Code 1975, a participation formula adopted in response to a petition for unitization must be:

> "An allocation among the separately owned interests derived from or associated with tracts in the unit area of all the oil or gas, or both, produced from the unit pool within the unit area, and not required in the conduct of such operation or unavoidably lost, such allocation to be based on the relative contribution which each such tract or interest is expected to make during the course of such operation, to the total production of oil or gas, or both, so allocated."

Evidence was presented to the Board in an initial set of hearings by the various interest owners in the field concerning the need for unitization and the appropriate unitization plan. Getty proposed a participation formula for unitization based entirely on pore volume, and the unit area initially proposed by Getty did not include sections 21 and 28, T2S, R1W. The Board issued order No. 83-170, in response to the evidence and unitization petition, on July 29, 1983.

For purposes of appeal, the pertinent findings of the order were, in summary: (1) unitization should be implemented to prevent unnecessary loss of hydrocarbons in the field; (2) the appropriate participation formula for the field should not be based entirely on pore volume, but rather sixty percent on pore volume and forty percent on productivity; (3) the productivity factor of the formula should be defined in terms of a tract's average daily production rate, average daily production being a well's best month of production on the tract; (4) no adjustments to pore volume should be made to reflect pressure-production history, remaining recoverable reserves or present worth of unitized substances; (5) the SE/4 of section 8 and a portion of the NW/4 of section 11, T2S, R1W should be included in the unit area; (6) the SW/4 of section 27 and the S/2 of section 28, T1S, R1W should be included in the unit area; (7) whether any part of sections 28 and 33, T2S, R1W, would be included in the unit area should be determined only after further review by a committee of experts.

Pursuant to these findings the order directed Getty "to immediately prepare a unitization proposal including a Unit Agreement, a Unit Operating Agreement and Special Field Rules." The Board further ordered, inter alia, that: (1) a committee of experts be formed to further map sections 21, 22, and 28; T2S, R1W; (2) Getty should redetermine tract participations in accordance with the 60/40 formula; (3) Getty should promptly submit a new petition for unitization to the Board.

In accordance with the Board's order, an expert committee was formed which met from September 14, 1983 until December 15, 1983. Tract participations were redetermined pursuant to the 60/40 formula, and Getty filed its new unitization petition on February 10, 1984.

Pursuant to the new petition, the Board heard more evidence and reviewed the data prepared by the expert committee. It was also during these proceedings that appellees asked the Board to exercise its subpoena power and require Getty to produce some specified documents.

In response, the Board promulgated order No. 84-382 with the following findings, inter alia: (1) sections 21, 28, and the NW/4 of section 22, T2S, R1W should be included in the unit area; (2) the 60/40 participation formula was supported by substantial evidence; (3) the productivity factor, comprising forty percent of the formula, should be determined from a tract's average daily production rate, average daily production being a well's best month of production on the tract through September 30, 1984, which was the last full month of production before the order's issuance; (4) the appellees' proposed productivity factor, encompassing a shorter time frame than that adopted by the Board, was inappropriate as it failed to consider all the factors necessary in creating a fair productivity factor; (5) earlier findings that adjustments to pore volume not be made should be reaffirmed; (6) no evidence was received which indicated the existence of separate mappable reservoirs in the field; (7) the SE/4

of section 8, T2S, R1W; the NW/4 of section 11, T2S, R1W; a portion of section 22, T2S, R1W; the SW/4 of section 27, T1S, R1W; and the S/2 of section 28, T1S, R1W should be included in the unit area; (8) the discovery requests filed by appellees should be denied.

In accordance with these findings, the Board decreed, inter alia, that the 60/40 formula should be adopted with productivity being a tract's average daily production rate, average daily production rate being a well's best month of production through September 30, 1984.

In its third order regarding Hatter's Pond, the Board acknowledged ratification of the unit agreement and unit operating agreement by the statutorily required percentage of interest owners. Consequently, the Board directed that unit operations commence May 1, 1985.

Pursuant to sections 9-17-15 and 41-22-20, Code 1975, three groups of interest owners appealed from the Board's order to the Circuit Court of Mobile County. For purposes of this appeal, the two pertinent groups and their contentions were, in summary: (1) Arden A. Anderson, et al., who represented owners in section 28, T2S, R1W and one owner in section 35, T1S, R1W, maintained that the Board-adopted formula failed to meet the statutory requirements of section 9-17-83(3), Code 1975; and (2) Hatter's Alabama, et al., who owned an interest in section 28, T2S, R1W as well as other sections, also alleged that the Board formula failed to follow the statutory directive in section 9-17-83(3), Code 1975.

We have previously stated that in order to unitize Hatter's Pond field it was necessary for the State Oil and Board to develop a participation formula. Initially, Getty proposed a participation formula based entirely on pore volume. Getty supported the proposal with expert testimony and exhibits. Although experts for most of the other parties agreed that pore volume was a valid indicator of a tract's future production, they

supported the adoption of a participation formula which included other factors in addition to pore volume. These experts maintained that the additional factors would result in a formula more protective of the coequal and correlative rights of the interest owners.

Several alternative formulas were proposed by the parties, including formulas based: (1) 50% on pore volume and 50% on historical average daily production; (2) on at least 50% productive capacity; (3) on past average daily production; (4) 50% on pore volume and 50% on productive acreage; (5) 100% on cumulative production; (6) 50% on pore volume and 50% on well tests; and (7) 50% on "highest tested capacity" and 50% *adjusted* pore volume. The participation formula ultimately adopted by the Board was based on two factors. The first factor, comprising sixty percent of the allocation formula, was based on pore volume. The second factor was based on productivity and accounted for the remaining forty percent of the formula. Further, the Board defined productivity as a tract's average daily production, average daily production being a well's best month of production on the tract.

Although the circuit court upheld the Board's order with regard to the inclusion of a productivity factor, the court found that productivity as defined by the Board was unreasonable and was unsupported by the evidence. Appellants support the productivity factor as defined by the Board and have appealed the circuit court's holding.

We first note the flexibility afforded the State Oil and Gas Board in issuing relief pursuant to a petition for unitization:

> "*Entry of Rules, Regulations, and Orders.* During or after conclusion of any hearing, including continued sessions thereof, the *Board shall promptly take such action as it may deem appropriate* concerning the subject matter being considered by the Board ...." (emphasis added)

Rule 400-1-12-.23, State Oil and Gas Board of Alabama Administrative Code.

The rule further provides the Board is not bound to grant the specific relief asked for in a petition but may amend or take "other appropriate action regarding the petition." Rule 400-1-12-.23, *supra.* Likewise, section 9-17-7(f), Code 1975, gives the Board great flexibility in fashioning relief:

> *"[T]he Board ... shall take such action* with regard to the subject matter thereof *as it may deem appropriate.* (emphasis added)

Our review of an order issued by the Oil and Gas Board pursuant to these provisions, as was the review by the circuit court of Mobile County, is governed by section 9-17-15, code 1975. Absent any allegation that the Board acted without or in excess of its jurisdiction in issuing the order or that the order issued was unconstitutional or procured by fraud—and there was none,—we are restricted to an examination of whether the order was reasonable and supported by the evidence. § 9-17-15, Code 1975.

In examining the reasonableness of the order, we have previously stated that "[a] determination by an administrative agency is not ... 'unreasonable' where there is reasonable justification for its decision." *Hughes v. Jefferson County Board of Education,* 370 So. 2d 1034 (Ala. Civ. App. 1979). Further, the Board's orders "are presumed to be prima facie correct" and, if we determine that evidence was offered which supports the order, then we must affirm. *Roberts v. State Oil & Gas Board,* 441 So. 2d 909 (Ala. Civ. App. 1983). The statute does not mandate that there be substantial evidence. *State Oil & Gas Board v. Seaman Paper Co.,* 285 Ala. 725, 235 So. 2d 860 (1970). We simply determine whether the evidence supports the Board's orders. *Seaman, supra.*

We cannot substitute our judgment, nor could the circuit court, substitute its judgment, for the Board's with regard to

these findings of fact, and we consequently attach no presumption of correctness to the circuit court's ruling. *Seaman, supra.*

Although expert testimony was presented supporting a participation formula based entirely on pore volume, other experts testified that the heterogeneity of Hatter's Pond made a single factor formula unreliable. As a result, the Board heard evidence supporting the inclusion of a second factor. Alternative two-factor formulas were proposed, including several that added a productivity factor. Several experts testified that the inclusion of such a factor would result in a participation formula more protective of correlative rights. The Board accepted this position and adopted a participation formula which was based in part on productivity.

We note, however, that appellees object not to the addition of a productivity factor, but to the time frame from which the productivity factor was obtained. Appellees' experts espoused a much shorter and more recent time period as being the appropriate yardstick for measuring productivity. However, as expert testimony indicated that to select a shorter time frame would not take into account the varying conditions of the wells in Hatter's Pond, the Board opted for a more expansive time frame.

Evidence suggested that the wells would be at varying stages of physical deterioration within the more recent time frame. However, productivity as defined by the Board takes into account this factor by expanding the time frame from which a well's productive capability is determined. We opine that this decision was reasonable and reflected the Board's desire to eliminate from the formula any possibility of skewed production figures due to the age of a well, the corrosion within it, the salt buildup within it, as well as other time related factors.

The need for an accurate well production factor is obvious. An older well with salt buildup, corrosion, etc., might not produce at full capacity. As a result, it could inaccurately reflect an

underlying tract's ability to produce. An expansive time frame, however, would put all the wells, regardless of age, on equal footing, because each well's best month of production would be used as the critical factor. Such an allocation factor would put each well in its best light and thus would be nondiscriminatory. Therefore, the Board reasonably concluded that a well's best month of production was a better indicator of the underlying tract's ability to produce in the future than was a month within the more limited time frame, making the Board's order concerning this issue not without reasonable justification as required by *Hughes, supra.*

We note that the productivity factor is not designed to reflect what a single *well* will contribute to future production but is to be an indicator of what the *entire tract* will contribute. In light of this fact, the Board was not unreasonable in attributing to each tract the best month in a well's history.

Further, as experts testified that a productivity factor would result in a fairer participation formula, their decision to include such a factor is not unsupported by the evidence. We also note that the Board's alternatives with regard to defining productivity are not limited to those proposed by the participants in the hearings. § 9-17-7(f), Code 1975; *see also,* Rule 400-1-12-.23, *supra.* Consequently, it was within the province of the Board to define productivity in a manner not *specifically* proposed by the hearing participants. So long as the formula was reasonable and supported by the evidence, we may not substitute our judgment for that of the Board. *Seaman, supra.* We find that the formula meets these requirements.

Appellants also asserted as error the circuit court's directive that a revised participation formula be developed and applied retroactively. As we have upheld the Board's original formula, review of this issue is not required.

The Board determined that the SW/4 of Section 27, the S/2 of Section 28, T1S, R1W, and the SE/4 of Section 8, T2S, R1W

should be included in the unit area. However, the circuit court asked the Board to reconsider on remand whether these three tracts should be included in the unit. We find this direction incongruous with the court's finding: "The Court does not find that the inclusion of these tracts in the unit is not supported by the evidence or is not reasonable ...."

We agree with the circuit court's determination that the Board's inclusion of these tracts is supported by the evidence and is reasonable. First, the record is replete with expert testimony that no portion of Hatter's Pond should be mapped as constituting a separate reservoir. This position was further supported by geological maps introduced at the hearings. The significance of such a determination is that all tracts that are a part of a single reservoir are necessarily in communication with the others. Although contradictory expert testimony suggested that these tracts were not in communication with the Hatter's Pond reservoir (suggesting the existence of separate reservoirs), the Board heard this evidence and resolved the controversy in favor of the experts supporting the single reservoir concept.

In addition, there was expert testimony that these tracts will contribute to unit production. Specifically, O'Dell, an expert for Getty, testified that hydrocarbons are located in Tracts 800, 2700, and 2800, and that these tracts will contribute to unit production. Other engineers supported his position.

As we cannot substitute our judgment for that of the Board's, *Seaman, supra,* and the decision to include the tracts is not unreasonable or unsupported by the evidence, we affirm the Board's inclusion of Tracts 800, 2700, and 2800 within the unit area.

We also note that appellee Anderson maintains that these three tracts, as well as two additional tracts, Section 11, T2S, R1W (Tract 1100) and Section 22, T2S, R1W (Tract 2200), should not be included because they are not developed and at the time of unitization had no producing wells on them. To

support this contention, Anderson relies on section 9-17-12(d), Code 1975. Appellees' reliance on this section is misplaced as this particular Code section deals with allocation during primary production.

On the other hand, allocation during secondary recovery is governed by sections 9-17-80 through -88, Code 1975. This article of the Oil and Gas chapter deals with unit operations as compared to the article cited by appellee Anderson which deals with conservation and regulation of production. Pursuant to section 9-17-82, Code 1975, the Board is authorized to unitize "an entire field ... to prevent waste or to avoid the drilling of unnecessary wells." This section does not limit unitization to those areas of the field that have currently producing wells.

Finally with regard to the inclusion of Tracts 1100 and 2200, experts testified that both tracts were underlain with recoverable hydrocarbons. Simply because these tracts have no producing wells they are not excludable from the unit area. Pursuant to section 9-17-83(3), Code 1975, Tracts 1100 and 2200 must be allocated a portion of the revenues "based on the relative contribution which each such tract or interest is expected to make." The Board has complied with this mandate, and we affirm the tracts' inclusion.

Appellants further assert that the circuit court erred when it directed the Board on remand to afford "procedural due process as pertains to discovery" to the parties involved in the controversy. Appellees have interpreted this statement as reflecting a finding by the circuit court that appellees were indeed denied procedural due process. Appellants argue that this is not the case. They maintain that the court was simply issuing a directive to insure that on remand all parties would be afforded procedural due process with regard to discovery.

Accepting as true appellees' contention that the circuit court found appellees were denied procedural due process in the hearings before the Oil and Gas Board, we first review whether our

Oil and Gas statutes afford participants a consitutional right to pretrial discovery in proceedings before an administrative agency.

We note that in the case of *Dawson v. Cole,* 485 So. 2d 1164 (Ala. Civ. App. 1986), we stated: "It has been generally recognized that there is no basic constitutional right to prehearing discovery in administrative proceedings." Appellants assert that this statement forecloses any further inquiry into this issue. We disagree.

A closer reading of our opinion in *Dawson, supra,* discloses our acknowledgement that "the denial of prehearing discovery *as applied* in a particular case" could result in a due process violation. Thus, we must examine whether the Board's denial of appellees' discovery request did in fact result in a denial of procedural due process.

We have examined the record and are satisfied that it did not. Throughout these proceedings, appellees have maintained that separate reservoirs exist in Hatter's Pond field. Appellees maintain that the information they requested but to which they were denied access would support their contention. However, numerous experts testified and maps were presented refuting this position.

Thus, even accepting as true appellees' argument that the information withheld by Getty would give credence to their position that the field consisted of separate mappable reservoirs, extensive testimony was given and numerous supporting documents were offered into evidence to support the Board's finding of a single reservoir. At most, therefore, the requested information would have been merely cumulative of that evidence supporting appellee's position that separate reservoirs existed in the field. The Board would still have been required to make a decision based on conflicting evidence. In other words, the required production of the information sought by appellees would not necessarily have changed the Board's decision. Con-

sequently, we do not find a due process violation by the Board in this aspect of the case.

In its cross appeal Hatter's Alabama contends that because the value of full well stream gas in Section 17 is lower than the value of the gas produced by the other sections, the circuit court erred by not directing the Board to adjust its formula to reflect this difference. We have examined the record and find that the Board's original decision not to adjust the pore volume factor allocated to Section 17 is supported by the evidence.

Recognizing once again that the Board's orders are presumed valid, *Roberts, supra,* and that we cannot substitute our judgment for the Board's, *Roberts, supra,* we cannot say that the decision not to make an adjustment is either unsupported by the evidence or unreasonable. Thus, we affirm its decision not to make an adjustment.

Expert testimony was presented that indicated that a well's liquid yield was not a good determinant of the underlying tract's contribution. For example, an expert for Getty testified that two wells had been drilled on one particular tract— only one hundred and ninety feet apart, and a sixteen percent difference in the condensate yield from the wells resulted.

Additional expert testimony showed that liquid yield was not a good indicator of contribution as condensate yield could be affected simply by the location of the well perforation. We hold this is sufficient evidence from which the Board could reasonably conclude that an adjustment to pore volume based on liquid yield would not result in a more accurate participation formula.

Finally, Anderson asserts in its cross appeal that the Board should be directed to make adjustments to the pore volume factor that comprises sixty percent of the formula. Anderson maintains that without an adjustment to pore volume based on the remaining recoverable reserves left in a tract, the participa-

tion formula will have no reasonable relation to each tract's expected contribution to future unitization. Anderson then advocates conducting bottom hole pressure tests for determining these remaining recoverable reserves. They contend that it is "elementary" that the amount of pressure in a container is indicative of the amount of gas in it.

The Board, however, rejected this argument and found that conducting bottom hole pressure tests were both unnecessary and unwarranted. O'Dell, a Getty expert, testified that seven years of production and pressure in Hatter's Pond made additional bottom hole pressure tests useless. Exxon also testified that too much pressure variation existed for the tests to be reliable, and they would not prove the existence of separate reservoirs within the field. More importantly, they testified this type of testing was of value only if Hatter's Pond consisted of more than one reservoir.

We have already pointed out that the Board determined Hatter's consisted of one reservoir and that such a determination was reasonable. An expert for appellees testified that the Board formula was appropriate if Hatters' were one reservoir. Thus, appellees' own expert supports the Board's refusal to make any adjustment to pore volume based on remaining recoverable reserves.

Based on the evidence and the guiding standard of review, we reverse the order of the circuit court and remand it for the entry of an order affirming the orders of the Oil and Gas Board.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Wright, P.J., and Holmes, J., concur.

APPENDIX B

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

Civil Action No. CV-84-003048

Arden A. Anderson, *et al.*,
Petitioners,

v.

Ralph Adams, *et al.*,
Respondents.

Civil Action Nos. CV-84-003104 and CV-85-000527

In the Matter of the Petition
of Dr. Gerald Wallace,
Appellant,

v.

The State Oil and Gas Board
of Alabama, a State Agency, and
Getty Oil Company, Inc.
Respondents.

Civil Action No. CV-84-003106 and CV-85-001281

Hatters Alabama Company and
LeBoc Mobile Company,
Plaintiffs,

v.

State Oil and Gas Board
of Alabama, *et al.*,
Defendants.

ORDER

Arden A. Anderson, et al. (Anderson), Petitioners in CV-84-003048, appealed to this Court under Sections 9-17-15 and 41-22-20, *Code of Alabama* (1975) from Orders of the State Oil and Gas Board of Alabama, (the Board) Order No. 84-382 rendered October 9, 1984, and Order No. 85-63, rendered April 9, 1985.

This statutory appeal was consolidated with appeals by Dr. Gerald Wallace (Wallace) Civil Action Nos. CV-84-003104 and CV-85-000527, and by Hatters Alabama Company, et al., (Hatters) CV-84-003106 and CV-85-001281. Getty Oil Company (Getty) was permitted to intervene on behalf of the Respondent State Oil and Gas Board of Alabama.

These appeals arise out of administrative orders by the Board, unitizing and commingling production in the Hatters Pond Field in Mobile County, Alabama, appointing Getty as operator of the unitized field, and setting an allocation formula by which those who had separate interests in the former individual production units would be paid out of the now combined production of all wells.

The appeals of Anderson and Hatters allege multiple errors by the Board in the conduct of the hearings leading to the Orders, and in the actual Orders themselves. While their interests in the field, and in the litigation, are not identical, their bases for appeal are substantially similar.

Wallace appeals on the basis that his land should have been, but was not, inlcuded in the unit.

Anderson appealed based on the statutory provisions found in the enabling act for the Board, and based upon the provisions of the Administrative Procedures Act.

The Court finds that the Administrative Procedures Act, Section 41-22-1, et seq., *Code of Alabama* (1975), governs these

proceedings procedurally since the filing date of the petition (Docket No. 4-11-841) by Getty is February 10, 1984. However, the scope of review is contained in Section 9-17-15, *Code of Alabama* (1975) where the appeal or review statutes set forth the standards applicable to that agency.

As pertinent to this decision, Section 9-17-15 states:

> "The reviewing court shall limit its consideration to the following:
>
> . . .
>
> (4) Whether the rule, regulation or order is reasonable; and
>
> (5) Whether the rule, regulation or order is unsupported by the evidence."

This case was briefed and heard without additional evidence, as required by the statute. Therefore, the court's Findings of Fact are from the record. Because the record in this case consists of several thousand pages of transcript, and hundreds of exhibits (comprising thousands of pages), the court has depended in large degree upon the diligence of the parties in bringing forward the contentions and the specific parts of the record which support those contentions. Where the Appellants have alleged that there was no evidentiary basis to support some finding or order of the Board, ample opportunity has been afforded to Respondents to bring to the attention of the Court that part of the record meeting that allegation.

Having received thorough briefs and proposed orders by all parties, and having, on October 11, 1985, heard arguments of counsel for all parties, the Court makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACTS

1. The Hatters Pond Field is located in Mobile County, Alabama, approximately 20 miles north of the City of Mobile.

Production is derived from one or more gas condensate reservoirs in the Smackover and Norphlet formations at a depth of about 18,000 feet. The field was discovered in December, 1974, with the completion of the Peter Klein 3-14 No. 1 well. When Getty filed with the Board its Petition No. 4-11-481 (which resulted in Order No. 84-382) there were a total of 12 wells inside the proposed unit producing gas to the gas processing plant, and one well drilling within the proposed unit, the S. M. Adams 9-16 No. 1 well, which was later completed as a producing well. All such wells were drilled on a drilling and/or production unit consisting of a section of land, containing 640 acres more or less. Getty operated all wells within the proposed unit, with the exception of the Wilkie 28-1 Well, which was operated by Exxon Company, U.S.A. ("Exxon"). There are portions of five sections, all without producing wells, which are included within the unit. They are S/2 of Section 28 and SW/4 of Section 27, T1S, R1W, on which dry holes have been drilled; SE/4 of Section 8, T2S, R1W, and portions of Sections 11 and 22, T2S, R1W, which are described by metes and bounds, on the latter of which a dry hole had been drilled.

2. The Hatters Pond Field is a complicated, complex field. The Board itself described the field as unique in the terms of structural and stratographic complexities that include faults, salt instrusions, lithological changes, and large variations in porosities, permeabilities and hydrocarbon pay thicknesses and distributions. These factors greatly influence the amount of hydrocarbons beneath each tract and the ability of the wells to produce these hydrocarbons. The Hatters Pond Field produces hydrocarbons from two different formations or rock units, the Smackover Formation, which is primarily a carbonate, and the Norphlet, which is primarily a sandstone. Both formations have distinct and often highly variable characteristics that result from their depositional and diogenetic histories, which characteristics include chemical compositions and variations in porosities, permeabilities and water saturation, all of which affect the distribution of hydrocarbons within the reservoir or

reservoirs. There are also extreme variations in hydrocarbon pay thicknesses within the field, and these are related to the amount of structural deformation as well as to the porosity and permeability changes. As stated, the field had been developed on a 640 acre spacing pattern, resulting in large distances between wells.

3. One characteristic of the field, and one of the differences between tracts in the main part or the east side of the field, and the edge tracts, (located to the west) is that the greatest hydrocarbon pay thicknesses are concentrated on the east side of the field, and extend from Section 35, T1S, R1W, in the north to Section 28, T2S, R1W in the south. The combined Smackover and Norphlet net pay thicknesses range from 369 feet in the 2-6 Well down to 31 feet in the 17-10 well and 7 feet in the 28-10 well (a dry hole located in Section 28, T1S, R1W). The wells on two of the edge tracts, Section 17, T2S, R1W and Section 33, T1S, R1W, have no productive Norphlet Formation and the same is true for the 9-6 and the 28-10 wells, both dry holes located respectively on Section 9, T2S, R1W, and Section 28, T1S, R1W. These wells had respectively 19 and 17 feet of net pay in the Smackover.

4. The participation formula approved by the Board consists of a 60% pore volume factor and a 40% productivity factor, with the productivity factor defined as the average daily production on a tract determined from a well's best month's production on that tract from date of first production through September 30, 1984. Since the pore volume of the unit area and of each tract was determined from the mapping of the field, and the production records showed the production from each well on a monthly basis, it required only mathematical calculations to determine the participation factor of each tract. Hatters and Anderson contend that the productivity factor, as defined by the Board, does not meet the requirements of expected relative contribution, as required by Section 9-17-83(3), *Code of Alabama,* (1975), whether or not such productivity factor is us-

ed in combination with the 60% pore volume factor. The Court agrees. The Court has reviewed carefully the results of the application of the Board's productivity factor to the various tracts in the Unit, and is satisfied that the productivity factor allocated to tracts such as Section 33, T1S, R1W and Sections 4 and 17, T2S, R1W, in no way constitute a measure of the expected relative contribution of these tracts to the future unit production. The Court finds no evidence in the record supporting the Board's participation formula as meeting the statutory requirements of section 9-17-83(3) *Code of Alabama* (1975). Further, it is unreasonable to say that what the 4-10 No. 1 well produced during May, 1976 is a measure of what Section 4 can be expected to produce in the future. The same can be said of the September, 1978 production from the 33-10 No. 1 well on Section 33; and the August, 1978 production from the 17-10 No. 1 well on Section 17. In 1979 and 1980, the extrapolated bottom hole pressures from wells on these tracts were substantially lower than the pressures in the main part of the field. The wells on these tracts now produce only with the aid of compressors; and the communication between the wells on these sections with the main part of the field is at best very poor.

5. If the participation factor allocated Section 33, T1S, R1W and Sections 4 and 17, T2S, R1W under the Board formula, is greater than the expected relative contribution of those tracts to the future Unit production, it has the effect of reducing the participation factors for the other tracts in the Unit. The mineral owners in Sections 33, 4 and 17 are unjustly enriched at the expense of the mineral owners in the other Unit tracts. Substantial sums are involved, as one Getty Exhibit shows the estimated recovery with unitization to be almost $3.2 billion. This same Exhibit shows that the mineral owners in Section 28, T2S, R1W, (the Wilkie 28-1 Well) will recover $70,000,000 less under the Board-ordered unitization than they would have without unitization. It greatly concerns the Court that these mineral owners suffer such a substantial loss by virtue of unitization,

while the mineral owners in all other tracts substantially benefit from unitization, except for one tract, which suffers only a small loss.

6. Hatters and Anderson contend that the SW/4 of Section 27 and S/2 of Section 28, T1S, R1W and the SE/4 of Section 8, T2S, R1W, should not be included within the unit. These tracts are underlain by the Smackover formation (and not the Norphlet) which has been mapped as productive, but there is evidence that there is no communication between these tracts and any producing well. Dry holes have been drilled on two of the tracts, Sections 27 and 28, T1S, R1W. As noted above, to the west, towards the edge of the field, there is a high percentage of nonpay in the Smackover; and there are stringers of tight zones separating porous and permeable zones, which means that the communication to the west is not as good as it is elsewhere; and the connate water saturation is a little higher to the west. The only evidence that these tracts will contribute to the unit production is the opinion testimony of Getty's Harold O'Dell, who testified that since the mapping of these areas showed that they were in communication with the rest of the field, one must therefore assume there was communication until such time as there was proof to the contrary. The Court does not find that the inclusion of these tracts in the Unit is not supported by the evidence or is not reasonable, but since the Court has already determined that the Board's participation formula does not meet the statutory requirements of Section 9-17-83(3), *Code of Alabama* (1975), the Court requests the Board to address this question again.

7. On June 7, 1984, on petition by Anderson, the Circuit Court of Tuscaloosa County, Alabama issued a writ of Mandamus to the Board ordering it to hear Anderson's petitions for pressure tests and discovery. (R101022). The Board did hear Anderson's request for pressure tests and discovery, but refused to rule on that request until all hearings were had (for which the discovery had been requested), and finally denied the requested

discovery and tests on October 9, 1984, when Getty's petition was approved in Order No. 84-382 (R101424). Fraud has been alleged on the part of Getty with regard to discovery, however, the Court finds no evidence to support these allegations.

8. The Court finds that, as to the issues which affected Anderson, Getty generated all records on which the Board made its decision in Order No. 84-382. The Court further finds that after general and specific requests for identifiable, material and relevant discovery by Anderson, the Board denied Anderson the right to compulsory production of documents held by Getty (R204359, et seq., R204763 et seq.). The Court also finds as a fact that the Board has never exercised its statutory authority to issue such subpoena as requested by Petitioners. (R206710, August 10, 1984).

9. The Board denied discovery in part because, it said, that Anderson was dilatory in requesting it. The Court finds that over 90 days elapsed from Anderson's first request for pressures and discovery until the first day of substantive hearings on Getty's petition, and that over 200 days elapsed from request before the Board ruled on the request.

10. The issue raised by Wallace regarding the Wallace acreage is the factual issue of whether that property is underlain by hydrocarbons that will contribute to production in the Hatters Pond Unit. Maps and documentary evidence were admitted into the record which showed no hydrocarbons in the Smackover-Norphlet Gas Pool of the Hatters Pond Field underlay the Wallace acreage (R300107-120, 302284-346). Wallace put forth evidence that would suggest that productive portions of the Smackover-Norphlet Gas Pool extend underneath the Wallace acreage. After considering the conflicting evidence on this issue, the Board found, in Order No. 83-170, that the Wallace acreage was not underlain by hydrocarbons in the Smackover-Norphlet Gas Pool and should not be included in the Unit.

11. During the hearings after the issuance of Order No. 83-173 and prior to the issuance of Order No. 84-382, Wallace was allowed to submit additional evidence. This evidence was in the form of new seismic line test data. (R302196). Expert witnesses for Wallace testified that, although the seismic line test data appeared to indicate that the Smackover-Norphlet Gas Pool did not extend under the Wallace acreage, this data had to be adjusted to account for various geological problems and that, when adjusted, the data showed that said pool did extend under the Wallace acreage. (R204947-995). Expert witnesses for Getty testified that the data demonstrated without the adjustment, the true state of geology underneath the Wallace acreage and that the Smackover-Norphlet Gas Pool did not extend beneath the Wallace acreage. (R205329-331, 205340). After considering the conflicting evidence, the Board again found that the Wallace acreage was not underlain by recoverable hydrocarbons that would contribute to Unit production.

12. Findings 26 through 35 in Order No. 83-170 and findings 39 through 45 in Order No. 84-382 set forth clearly and in detail why the Board concluded that there were no recoverable hydrocarbons under the Wallace acreage that would contribute to Unit production.

13. There is substantial evidence in the record to support the Board's findings and rulings with respect to the Wallace acrage and the Court finds that the Board's findings and rulings in this regard are reasonable.

CONCLUSIONS OF LAW

1. As noted above, this Court's consideration of Order Nos. 85-63 and 84-382 is governed by Section 9-17-15, *Code of Alabama* (1975), which sets forth the standards of review by which a reviewing court must judge the validity of an Order issued by the State Oil and Gas Board. As pertinent to this decision, Section 9-17-15 states as follows:

> The reviewing court shall limit its consideration to the following:
>
> . . .
>
> (4) Whether the rule, regulation or order is reasonable; and
>
> (5) Whether the rule, regulation or order is unsupported by the evidence.

2. The two standards of review quoted above are separate and distinct points of review; in other words, a finding by this Court that the Board Orders under review, or any particular aspects thereof, are supported by some evidence in the record does not necessarily compel a conclusion that such an order (or part thereof) is reasonable. The plain language of Section 9-17-15 indicates as much; in the absence of any expressed intent to the contrary, it must be presumed that the legislature would not have enacted two standards of review if it had intended that these standards be treated as one. Further support for this conclusion may be found in numerous cases decided under the Federal Administrative Procedure Act, 5 U.S.C. Section 706(2), which provides in pertinent part that an administrative agency's action may be set aside if it is (a) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or (b) "unsupported by substantial evidence." These standards of review are analogous to those found in Section 9-17-15 and quoted above. In *Bowman Transportation, Inc. v. Arkansas-Best Freight System,* 419 U.S. 281, 95 S. Ct. 438, 42 L.Ed.2d 447 (1974), the United States Supreme Court held that an administrative agency's action may be deemed "arbitrary or capricious" (i.e., "unreasonable") even though it is supported by "substantial evidence." *See* also *Midwest Coast Transport, Inc. v. United States,* 391 F. Supp. 1209 (D.S.D. 1975); *Scanland v. U. S. Army Test and Evaluation Command,* 389 F. Supp. 65 (D. Md. 1975). Therefore, even if this Court should find that Order Nos. 85-63 and 84-382, or any particular por-

tions thereof, are supported by the evidence, its inquiry may go further in order to determine the reasonableness of those orders.

3. With regard to determining the validity of the 60% pore volume/40% productivity formula selected by the Board as the basis for allocating Unit production among the various tracts in the Hatters Pond Field Unit, this Court must apply the standards of review found in Section 9-17-15 in light of an additional statutory requirement that is specifically directed at the manner in which Unit production must be allocated. Section 9-17-83(3), *Code of Alabama* (1975) requires that Unit production be allocated among the individual tracts within the Unit according to "the relative contribution which each such tract or interest is expected to make" during the course of the Unit operations. Order No. 84-382, as implemented by Order No. 85-63, calculates the 40% productivity factor according to the highest average daily production rate as determined from a well's best month of production on a tract, from the date of first production (as early as 1975) through September, 1984. The Plaintiffs have attacked this method of calculating the 40% productivity factor as violative of Section 9-17-83(3). Applying Section 9-17-83(3) in conjunction with the pertinent standards of review set forth in Section 9-17-15, this Court views the issues with respect to the validity of the method used to calculate the 40% productivity factor as follows:

(a) Is the method of determining the 40% productivity factor "supported by the evidence?" In other words do the "tendencies of the evidence" and the "reasonable inferences to be drawn therefrom," (*State Oil and Gas Board of Alabama v. Seaman Paper Company,* 285 Ala. 725, 231 so.2d 860 (1970)) support the Board's finding that a particular tract's highest daily average during its best month of production is an acceptable reflection of what that tract may be expected to produce in the future as a part of the Hatters Pond Field Unit?

(b) Is the method of determining the 40% productivity factor "reasonable?" In other words, is there a "rational connection" (*Bowman Transportation, supra*) between a tract's highest daily average during its best month of production and the amount which that tract may be expected to produce in the future as a part of the Hatters Pond Field Unit?

4. In attempting to defend the 60% pore volume/40% productivity allocation formula and the Board's chosen method of calculating the 40% productivity factor, Getty argues that the State Oil and Gas Board heard arguments on a wide range of possible allocation formulas and methods of calculation, none of which were completely satisfactory, and arrived at the formula and method of calculation embodied in Order No. 84-382 as a reasonable compromise or middle ground. This argument might be persuasive if the validity of Order Nos. 84-382 and 85-63 were to be determined in the abstract. However, this Court finds that the validity of these Board Orders can be judged properly only by examining the results that are obtained when the 60% pore volume/40% productivity factor is actually put into operation and applied to the Hatters Pond Field. The cases of *Halbouty v. Railroad Commission,* 163 Tex. 417, 357 S.W.2d 364 (1962), *cert. denied,* 371 U.S. 888 (1962), *Atlantic Refining Company v. Railroad Commission,* 346 S.W.2d 801 (Tex. 1961), and *Marrs v. Railroad Commission,* 177 S.W.2d 941 (Tex. 1944), are particularly applicable in this regard. In each of these cases, the court struck down a proration formula because it found that when that formula was put into effect, it produced unreasonable results by allowing certain tracts to receive credit for production that was far in excess of their actual productive capability, at the expense of other, more productive tracts. This Court believes that it should examine the orders at issue in this case in the same manner.

5. For the reasons set forth in the Findings of Fact, the Court finds that it is simply unreasonable to calculate the 40% productivity factor according to a particular tract's highest daily

average during its best month of production, no matter how long ago that peak production occurred and regardless of whether the well on that tract still produces. It only requires a simple exercise of common sense to see that what a well produced during one month, in, for example, 1976 (as in the case of the 4-10 No. 1 Well) has no rational connection to what that tract can be expected to contribute to Unit operations in the future, given the subsequent production history of that tract. Indeed, Getty's own Exhibits show that the application of this productivity factor to the Hatters Pond Field results in certain tracts being credited with far more produciton than what their current production history shows them to be capable of producing. Nor does this Court find any evidence in the record that would support a finding that the productivity factor as defined by the Board is any measure of a tract's expected relative contribution to the Unit production. Order No. 84-382, as implemented by Order No. 85-63, therefore fails to meet the statutory requirement of Section 9-17-83(3) and is due to be invalidated under Sections 9-17-15(4) and 9-17-15(5).

6. The Court finds, as a matter of law, that the due process clauses of the State and Federal Constitutions provide all litigants (including those in administrative procedures) with such reasonable compulsory discovery as will afford each litigant the right to find and submit all the data affecting all of the issues before the tribunal. *Ex Parte Dorsey Trailers, Inc.* 397 So.2d 98 (Ala. 1981).

The Supreme Court of Alabama in *Medical Services Administration v. Duke,* 378 So.2d 685, 686 (Ala. 1979) said:

> "It is, of course, well-settled law in this jurisdiction that due process must be observed by all boards, as well as by all courts. *State Tenure Commission v. Madison County Board of Education,* 282 Ala. 658, 213 so. 2d 823 (1968); *Katz v. Alabama State Board of Medical Examiners,* 351 So.2d 890 (Ala. 1977) Procedural due process in this

respect requires at a minimum an orderly proceeding appropriate to the case or adapted to its nature, just to the parties affected, and adapted to the ends to be attained; one in which a person has an opportunity to be heard, and to defend, enforce, and protect his rights before a competent and impartial tribunal legally constituted to determine the right involved; representation by counsel; procedure at the hearing consistent with the essentials of a fair trial according to established rules which do not violate fundamental rights, and in conformity to statutes and rules, conducted in such a way that there will be opportunity for a court to determine whether the applicable rules of law and procedure were observed; revelation of the evidence on which a disputed order is based and opportunity to explore that evidence, and a conclusion based on the evidence and reason."

Section 41-22-12(d), *Code of Alabama* (1975) provides:

"Opportunity shall be afforded all parties to respond and present evidence and argument on all material issues involved. . ."

Section 41-22-13(c), *Code of Alabama* (1975) provides:

"A party may conduct cross-examination required for a full and true disclosure of the facts, except as may otherwise be limited by law."

7. The Court finds, as a matter of law, that because the discovery sought is labelled "proprietary", is not sufficient reason to prevent its disclosure. As a matter of law, Getty cannot at the same time attempt to force a party into unitization, trading specific property for a percentage of a larger property, without allowing the forced parties to discover, evaluate and litigate the respective values of the trade before the Board. *Texas Oil and Gas Corporation v. Hawkins Oil and Gas, Inc.*, 668 S.W.2d 16 (Ark. 1984). Fairness and justice dictate that

Getty, because of its filing the petition for unitization and because of the unique position it occupies in the field, must submit to discovery all evidence reasonably relevant to the issues contained in the petition.

8. Order Nos. 83-170 and 84-382 set forth in detail the reasons why the Board decided that the Wallace acreage should not be included in the Unit. The findings and conclusions in those orders address all points that were materially at issue with respect to the Wallace acreage during the hearings before the Board. These orders meet whatever requirement of law may be applicable that such orders contain specific findings of facts and conclusions of law. Furthermore, substantial compliance with such requirement is sufficient to meet any objections on appeal. *See Garret v. Mathews,* 474 F. Supp. 594 (N.D. Ala. 1979), *aff'd,* 625 F.2d 658 (5th Cir. 1980); *In the Matter of Boston & Providence Railroad Corp.,* 428 F.2d 159, 164 (1st Cir. 1970); *State ex rel. Harris v. Annuity and Pension Board,* 87 Wis.2d 646, 275 N.W.2d 668, 675 (1979); *Deep South Broadcasting Co. v. F.C.C.,* 278 F.2d 264, 266 (D.C. Cir. 1960); *Raye and Company Transports, Inc. v. United States,* 314 F. Supp. 1036, 1042 (W.D. Mo. 1970); and *Community & Johnson Corp. v. United States,* 156 F. Supp. 440, 443 (D.N.J. 1957).

9. Order Nos. 83-170 and 84-382, to the extent that they deny the relief sought by Wallace, are consitutional.

10. Order Nos. 83-170 and 84-382, to the extent that they deny the relief sought by Wallace, are not without or in excess of jurisdiction.

11. Order Nos. 83-170 and 84-382, to the extent that they deny the relief sought by Wallace, are reasonable.

12. Order Nos. 83-170 and 84-382, to the extent that they deny the relief sought by Wallace, are supported by the evidence.

13. Order No. 85-63, the ratification order, meets the requirements of Section 9-17-84, is reasonable and is supported by the evidence.

ORDER

1. Order Nos. 83-170 and 84-382, (together with Order No. 85-63 which implemented Order No. 84-382), to the extent that said Orders approve and establish a 60% pore volume/40% productivity participation formula for the Hatters Pond Unit are invalid for the reasons hereinabove set forth in the Findings of Fact and Conclusions of law.

2. The Unit Agreement and Unit Operating Agreement approved by the Board in said Orders are invalid and of no effect in that the participation formula for the Hatters Pond Unit is invalid, as hereinabove ordered.

3. That the relief requested by Appellant Wallace in his complaints or petitions is denied.

4. Orders Nos. 83-170 and 84-382 to the extent that they deny Wallace's requests that property in Sections 25, 26 and 36, T1S, R1W be included within the Unit area for the Hatters Pond Unit, are hereby affirmed.

5. That this cause is hereby remanded to the State Oil and Gas Board for further proceedings consistent with this Order and the Findings of Fact and Conclusions of Law; and on remand the State Oil and Gas Board shall:

(a) provide all participants in the administrative hearing procedural due process as pertains to discovery;

(b) revise and redetermine, after discovery and further hearing, the productivity factor in the Board's 60% pore volume/40% productivity participation formula so that the revised participation formula for the Hatters Pond Unit fully complies with the statutory requirements of Section 9-17-83(3), *Code of Ala.* (1975);

(c) revise and redetermine the Unit participations of each tract included in the Hatters Pond Unit based upon a 60% pore volume/40% productivity participation formula after the productivity has been revised and redetermined by the Board as provided in (b) above, which revised participations shall relate back to and be effective as of May 1, 1985;

(d) reconsider further whether or not SW/4 of Section 27, S/2 of Section 28, T1S, R1W and SE/4 of Section 8, T2S, R1W should be inlcuded within the Hatters Pond Unit, with a participation in the unit production; and

(e) require that the order entered by the Board after remand be in writing ratified or approved by the owners of at least 75% in interest as costs are shared under the revised tract participations and by 75% in interest of the royalty and overriding royalty owners in the unit area, within six months from and after the date the Board enters its order revising the participation formula and the tract participations, failing which Orders Nos. 83-170, 84-382 and 85-63 shall be totally void and of no effect.

6. A certified copy of this Order shall be recorded by the Clerk of this Court in the Office of the Judge of Probate of Mobile County, Alabama, and be indexed in both the direct and reverse real property indices of said Court in the names of Getty Oil Company, and all other parties who signed and/or ratified said Unit Agreement and Unit Operating Agreement.

7. Costs in these proceedings (including the costs of recording and indexing the certified copy of this Order as aforesaid) are assessed against Wallace, as to his petitions only; the remaining costs are assessed against the State Oil and Gas Board, for which let execution issue.

DONE and entered this 5th day of May, 1986.

/s/ Edward B. McDermott
Circuit Judge

APPENDIX C

BEFORE THE STATE OIL AND GAS BOARD OF ALABAMA

PURSUANT TO A DECISION RENDERED FOLLOWING SPECIAL SESSIONS OF THE STATE OIL AND GAS BOARD OF ALABAMA HELD ON APRIL 11, 1984; JUNE 29, 30, 1984; JULY 5, 6, 7, 12, 13, 14, 1984; AUGUST 10, 1984; AND SEPTEMBER 10, 1984; THE FOLLOWING ORDER IS HEREBY PROMULGATED:

IN RE: ORDER NO. 84-382

DOCKET NOS. 4-11-841, 4-11-842, 4-11-843, 4-11-844, 4-11-845, 4-11-846A

These causes came on for hearing before the State Oil and Gas Board of Alabama, and they were consolidated for hearing purposes. All of the petitions relate to the proposed unitization of the Hatter's Pond Field in Mobile County, Alabama. Getty Oil Company filed Docket No. 4-11-841; Paul M. Brown, et al. filed Docket No. 4-11-842; Hatters Alabama Company and Leboc Mobile Company filed Docket No. 4-11-843; Dr. Gerald Wallace filed Docket Nos. 4-11-844 and 4-11-845; and Arden A. Anderson, Dominex, Inc., et al. filed Docket No. 4-11-846A.

FINDINGS

After having heard all the testimony of all the witnesses and all parties concerning notice for these consolidated petitions and after carefully reviewing the evidence and being fully advised of the premises and after due consideration thereof, the Board finds as follows:

1. That due, proper, and legal notice of the hearing of said causes at these special sessions has been given in the manner and form and within the time provided by law and the rules and regulations of this Board and that Getty Oil Company has fully

complied with the notice requirements of Rule 400-1-12-.10 of the *State Oil and Gas Board of Alabama Administrative Code.* Further, Getty Oil Company made a diligent and extraordinary effort to provide notice to all interested parties by methods in addition to and beyond the requirements of said Rule 400-1-12-.10, including the following: mailing approximately 3,750 letters, first class mail, to known interested parties having obtained lists of interest owners in the Hatter's Pond Field by reviewing title opinion files, Tax Assessor's records, the records of Title Insurance Company of Mobile, Exxon Company's ownership records and other title records; running notices in the *Mobile Press Register;* running a notice in the *Southeastern Oil Review;* and hiring an independent landman to post copies of the notice of this hearing in post offices, convenience stores, filling stations, and other places located in and near the Hatter's Pond Field. Due and legal proofs of newspaper publications are on file with the Board and are part of this record. The Board also finds that the aforementioned Petitioners, other than Getty Oil Company, have also complied with the notice requirements of Rule 400-1-12-.10 of the *State Oil and Gas Board of Alabama Administrative Code.* The Board has full jurisdiction of these causes.

BOARD ORDER 83-170

Getty Oil Company filed its petition in response to Board Order 83-170, and the Board takes notice of the record in Docket No. 8-19-821 which has been made a part of the record in these proceedings, said Order having remanded Docket No. 8-19-821 to Getty for the following specific actions:

"1. That a committee of experts, including geologists, geophysicists, and petroleum engineers, be formed by Petitioner for the purpose of mapping Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama, and any extensions of the common gas pool therefrom, and also for the purpose of

determining the nature of the pressure communication between the Exxon Wilkie 28 Well (Permit No. 2746) and the wells located to the north of this well. All parties who are affected by the inclusion *vel non* of these sections shall have an opportunity to participate in the committee meetings.

"2. That Petitioner shall make a redetermination of tract participations based on the tract participation formula enunciated in the findings herein and on the unit area to be proposed. The redetermination shall also be based on the finding herein that mapping of pore volume values higher than actually present in any well is not an acceptable mapping technique for the unitization of the Hatter's Pond Field. All parties who are affected by said redetermination shall have an opportunity to participate in this procedure.

"3. That Petitioner shall submit monthly progress reports on unitization to the State Oil and Gas Supervisor. Petitioner is encouraged to commence the committee meetings on or before October 1, 1983.

"4. That Petitioner shall, in order to prevent waste and protect correlative rights, present a unitization proposal to the Board expeditiously. If such a proposal is not presented to the Board within a reasonable period of time, the Board may consider options including but not limited to a reduction in allowables for the Hatter's Pond Field.

"5. That Petitioner shall submit a new unitization petition to the Board, containing a new docket number, and such petition must fully comply with the notice provisions of Rule 400-1-12-.10 of the *State Oil and Gas Board of Alabama Administrative Code.* Upon receipt of such a petition, the Board shall immediately set a hearing for said Cause."

FINDINGS

After having heard all of the testimony and after carefully reviewing all of the evidence pertaining to Getty Oil Company's compliance with the five requirements set forth in Board Order 83-170, which are set out above, the Board finds:

2. That Getty Oil Company formed a committee of experts, including geologists, geophysicists, and petroleum engineers for the purpose of mapping Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama, and also for the purpose of determining the nature of the pressure communication between the Exxon Wilkie 28-1 Well and the wells located to the north of this well. On August 24, 1983, Getty Oil Company mailed a letter of invitation to participate in the formation of a technical committee to all known interested parties. Parties were advised to designate experts by September 2, 1983, and they were advised that the first committee meeting was scheduled for September 14-15, 1983, in New Orleans, Louisiana. A total of ten technical committee meetings was held in accordance with Board Order 83-170, with the last such meeting on December 15, 1983. In the interim, written monthly reports were submitted to the Oil and Gas Supervisor by the Chairman of the Technical Committee and complete minutes of each meeting were filed with the Oil and Gas Supervisor. On December 19, 1983, a final report of the Hatter's Pond Technical Committee was filed with the Oil and Gas Supervisor. This report was revised on December 30, 1983, and all of these reports and minutes are part of this record. Two interpretations of the geology in Sections 21, 22, and 28, Twonship 2 South, Range 1 West, Mobile County, Alabama, were developed by separate groups in the Technical Committee (Interpretation "A" and Interpretation "B"), and the Committee members unanimously agreed that the nature of pressure communication between the Exxon Wilkie 28-1 Well and the wells to the north could not be determined, but it was agreed that there is pressure communication in the Smackover Formation between the nor-

thern part of the field (north of Section 21, Township 2 South, Range 1 West) and southern part of the field (Sections 21, 22, and 28 Township 2 South, Range 1 West).

3. That the Technical Committee calculated and removed the mapped pore volume greater than any pore volume actually present in any well in the Hatter's Pond Field and redetermined the tract participations for all tracts included in the proposed unit area based on the tract participation formula and mapping techniques as set forth in Board Order 83-170.

4. That Getty Oil Company submitted monthly progress reports from the Technical Committee as set forth in Finding 2 above, and that the Technical Committee held its first meeting before October 1, 1983, as also set forth in Finding 2 above.

5. That Getty Oil Company presented a unitization proposal to this Board expeditiously when it filed its petition on February 10, 1984, requesting this Board to unitize the Hatter's Pond Field.

6. That Getty Oil Company's new unitization petition was filed on February 10, 1984, and it received a new docket number, No. 4-11-841. Upon receipt of Getty Oil Company's petition, the Oil and Gas Supervisor scheduled and conducted a prehearing conference in Tuscaloosa, Alabama, on March 30, 1984, and the first of a series of Board hearings was held on April 11, 1984 in Tuscaloosa, Alabama.

TECHNICAL COMMITTEE ACTIVITIES PURSUANT TO BOARD ORDER 83-170

Pursuant to Board Order 83-170, Getty Oil Company organized a committee of experts from among the interested parties, including geologists, geophysicists and petroleum engineers for the purpose of mapping Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama as well as any extensions of the common gas pool therefrom. The

committee also was charged with determining the nature of the pressure communication between the Exxon Wilkie 28-1 Well (Permit No. 2746) in Section 28 and the wells north of the Section 28 well. The committee was further charged with redetermining the tract participation factor for each tract based on the tract participation formula enunciated in Finding 16 of Board Order 83-170.

The Technical Committee devoted considerable time from September through December, 1983 evaluating the data available in the southern part (Sections 21, 22, and 28 Township 2 South, Range 1 West) of the Hatter's Pond Field. The work was accomplished by a Geological/Geophysical Sub-Committee and an Engineering Sub-Committee. Conclusions resulting from the work are summarized below.

Geological/Geophysical Sub-Committee

Members of the Geological/Geophysical Sub-Committee agreed on the northern and eastern limit of the productive area to be mapped and the location and extent of faulting within the area to be mapped. Members of the Sub-Committee generally agreed upon mapping rules and assumptions.

Sub-Committee members agreed that the review of seismic data would not be needed to support the mapped interpretations agreed upon by the Committee.

The members of the Geological/Geophysical Sub-Committee could not agree on the following: the gas/water contacts in the Norphlet Formation in the Baldwin 21-15 Well (Permit No. 3697) and the Wilkie 28-1 Well; the rate of dip to be used in mapping the graben area in which the Baldwin 21-7 Well (Permit No. 2222-B) is located; and the westerly and southerly downdip limits of production.

Different interpretations ("A" and "B") were developed by two groups within the Sub-Committee. Interpretation "A" was

adopted by Exxon Company, U.S.A.; Hatters Alabama Company and Leboc Mobile Company; Hilliard Oil and Gas; the Baldwins; Dominex, Inc.; Sabine Production Company; Carl D. Doehring; Crutcher-Tufts; Fred and Emil Meyer; and Getty Oil Company. Getty Oil Company presented evidence in support of Interpretation "A" at these hearings (Docket Nos. 4-11-841, 4-11-842, 4-11-843, 4-11-844, 4-11-845 and 4-11-846A).

Interpretation "A" participants used a compromise productive limit in the Wilkie 28-1 Well and the Baldwin 21-15 Well to determine the westerly and southerly downdip limit of production in the area mapped. This was done because of the difficulty in determining the gas/water contact in the Norphlet Formation in these wells. Interpretation "A" participants used a constant rate of throw for the fault north of the Baldwin 21-7 Well and adjusted the contours in the graben to the accepted contours north of Section 21 as a means of establishing the rate of dip for the graben area in which the Baldwin 21-7 Well is located. Interpretation "A" participants instructed the Engineering Sub-Committee to use rules in calculating pore volume that considered the entire Hatter's Pond Field when determining the maximum net pay, porosity, and pore volume that could be used. The maps and rules used by Interpretation "A" participants credit more pore volume and a larger area of production to the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West) than do the maps and rules used by Interpretation "B" participants.

Interpretation "B" was adopted by Paul M. Brown, et al.; AMAX Petroleum Corporation; Mobile County Board of School Commissioners; George Radcliff; and the First National Bank of Mobile. Brown and AMAX presented evidence in support of Interpretation "B" at these hearings. Interpretation "B" participants agreed upon specific gas/water contacts in the Wilkie 28-1 Well and the Baldwin 21-15 Well to use in determining the westerly and southerly downdip limit of production in

the area mapped. Interpretation "B" participants used the results of the dip meter in the Baldwin 21-7 well to establish the rate of dip for mapping in the garden. Interpretation "B" participants instructed the Engineering Sub-Committee to use rules in calculating pore volume that considered only the wells within the different fault blocks in the southern part of the field when determining the maximum net pay, porosity, and pore volume that could be used in each fault block. The maps and rules used by Interpretation "B" participants credit less pore volume and a smaller area of production to the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West) than do the maps and rules used by Interpretation "A" participants.

Arden A. Anderson, Dominex, Inc., et al. submitted Interpretation "C" at these hearings as a third interpretation of the mapping of the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West). This interpretation was not presented or discussed at the Technical Committee meetings held between September 14, 1983, and December 15, 1983. Interpretation "C" was presented even though the two geologists representing Dominex, Inc. in the Geological Geophysical Sub-Committee had signed maps accepting Interpretation "A".

Interpretations "A" and "B" are signed by a total of twelve geologists, three engineers, and one geophysicist. All of these participants worked on preparing these maps. The maps of Anderson-Dominex referred to as Interpretation "C", are signed by one geologist, and that geologist is an employee of Dominex, Inc. Anderson-Dominex located the major fault and the east boundary of the reservoir on their maps differently than the location unanimously agreed upon by the Technical Committee.

FINDINGS

After hearing all of the evidence and after carefully reviewing all of the minutes and exhibits pertaining to the Geological/Geophysical Sub-Committee activities, the Board finds:

7. That Sections 21, 28, and a portion of the Northwest Quarter of Section 22, Township 2 South, Range 1 West, Mobile County, Alabama, should be included within the proposed Hatter's Pond Field Unit and such inclusion would protect the coequal and correlative rights of all the mineral interest owners.

8. That Interpretation "A", as proposed by Getty Oil Company, is supported by Hatters Alabama Company and Leboc Mobile Company; Exxon Company, U.S.A.; Sabine Production Company; Hilliard Oil and Gas; the Baldwins; Carl D. Doehring; Crutcher-Tufts; and Fred and Emil Meyer. Interpretation "A" is supported by the weight of the evidence, is the most reasonable geologic interpretation of the common gas pool in the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West), is prepared in a manner consistent with good mapping concepts and techniques, and is consistent with the findings and directives of Board Order 83-170. The pore volume calculations, based on Interpretation "A" for the southern part of the field, fairly and accurately represent the pore volume that should be attributed to Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama, so that the coequal and correlative rights of all of the mineral interest owners are protected. Therefore, Interpretation "A" should be used in determining the pore volume to be assigned to these sections.

9. That Interpretation "B", as proposed by Paul M. Brown, et al. is also supported by AMAX Petroleum Corporation, Mobile County Board of School Commissioners, George Radcliff, and the First National Bank of Mobile. Interpretation "B" does not follow the directives of Board Order 83-170 and does not fairly represent the pore volume that should be attributed to Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama.

10. That Interpretation "C", as proposed by Arden A. Anderson, Dominex, Inc., et al. is dissimilar to the interpreta-

tions presented and agreed to by the other Geological/Geophysical Sub-Committee participants, who mapped the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West), as directed by the Board in Order 83-170. Interpretation "C" does not follow the directives of Board Order 83-170 and does not fairly represent the pore volume that should be attributed to Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama.

Engineering Sub-Committee

The Engineering Sub-Committee of the Technical Committee formed by Getty pursuant to Board Order 83-170, Section 1, p. 42, generally agreed that the Wilkie 28-1 Well is in pressure communication with wells located to the north of this well in the Hatter's Pond Field; however, the Sub-Committee could not reach a consensus on the exact nature of this pressure communication. The Engineering Sub-Committee agreed that there is, or probably is, communication in the Smackover Formation between the northern part of the field (north of Section 21, Township 2 South, Range 1 West) and the southern part of the field (Sections 21, 22, and 28, Township 2 South, Range 1 West). The Technical Committee agreed that the nature of this pressure communication is unknown and that there was no justification to modify maps for any particular concept.

Pursuant to Board Order 83-170, Section 2, p. 42, the Engineering Sub-Committee removed the mapped pore volume values higher than present in any well in the Hatter's Pond Field, calculated the 60 percent pore volume factor for each tract in the proposed Hatter's Pond Field Unit, calculated the 40 percent productivity factor for each tract in the proposed Hatter's Pond Field Unit, and determined the tract participation for each tract in the proposed unit area, including Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama.

FINDINGS

After hearing all the evidence and after carefully reviewing all of the minutes and exhibits pertaining to the Engineering Sub-Committee activities, the Board finds:

11. That the Exxon Wilkie 28-1 Well is in pressure communication with other wells in the Hatter's Pond Field, but the exact nature of the pressure communication is unknown and need not be determined.

12. That the Engineering Sub-Committee redetermined pore volume and tract participation for each tract in the proposed Hatter's Pond Field Unit as directed by Board Order No. 83-170.

DATA FROM THE DRILLING AND COMPLETION OF THE S.M. ADAMS 9-16 No. 1 WELL

The S.M. Adams 9-16 No. 1 Well (Permit No. 3995) was completed in Section 9, Township 2 South, Range 1 West in the Hatter's Pond Field, Mobile County, after the Technical Committee concluded its series of meetings on December 15, 1983. The drilling and completion of the S.M. Adams 9-16 Well provided data pertaining to the proposed Hatter's Pond Field Unit. A Supervisor's Conference was held on July 10, 1984, to consider the data provided by the S.M. Adams 9-16 Well. Seven parties, including Exxon Company, U.S.A.; Mobile County Board of School Commissioners; Hatters Alabama Company and Leboc Mobile Company; Getty Oil Company; George Radcliff; Arden A. Anderson, Dominex, Inc., et al.; and AMAX Petroleum Corporation participated in the meeting.

At the Supervisor's Conference, agreement was reached as to the formation tops, net pay, average porosity, and pore volume assignments for the Smackover and Norphlet Formations penetrated by the drilling of the S.M. Adams 9-16 Well. However, total agreement could not be reached on the mapping of pore volume in the area of the S.M. Adams 9-16 Well.

Consensus pore volume maps for the Smackover and Norphlet Formations, and a consensus total pore volume map were prepared by and/or endorsed by Exxon Company, U.S.A.; Mobile County Board of School Commissioners; Hatters Alabama Company and Leboc Mobile Company; and Getty Oil Company. These revised pore volume maps did not change the productive limit for the proposed Hatter's Pond Field Unit north of Section 21, Township 2 South, Range 1 West, as set forth in Board Order 83-170, and confined the pore volume changes to an area near the Adams 9-16 Well.

Alternate Smackover net pay, average porosity, and pore volume maps were prepared by George Radcliff and were endorsed by Paul M. Brown, et al. The Radcliff Smackover pore volume map assigns more Smackover pore volume to the area of Section 9, Township 2 South, Range 1 West, than the consensus Smackover pore volume map.

Arden A. Anderson, Dominex, Inc., et al. prepared a Smackover structure map which incorporated the data obtained by the drilling of the S.M. Adams 9-16 Well. The Anderson-Dominex structure map represents an interpretation of the structural geology of the Hatter's Pond Field area.

FINDINGS

After reviewing all of the data, exhibits, and evidence provided by the drilling and completion of the S. M. Adams 9-16 Well located in Section 9, Township 2 South, Range 1 West, Mobile County, Alabama, the Board finds:

13. That the data provided by the drilling and completion of the S.M. Adams 9-16 Well necessitates modification to Getty Oil Company's total pore volume map (Getty Exhibit 15, Docket No. 4-11-841) in order to protect the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit.

14. That all parties participating in the Hatter's Pond unitization hearing (Docket Nos. 4-11-841 through 4-11-846A) had full opportunity to review the data, discuss the data, and present interpretations of the data provided by the drilling and completion of the S.M. Adams 9-16 Well. This opportunity was provided to all parties during a Supervisor's Conference on July 10, 1984, and during the Hatter's Pond unitization hearings, and all parties were allowed to submit map interpretations using the data from the Adams 9-16 Well prior to the closing of the Hatter's Pond unitization hearings.

15. That the Smackover and Norphlet Formation top determinations and net pay, average porosity, and pore volume assignments for the Smackover and Norphlet Formations, resulting from the drilling and completion of the S.M. Adams 9-16 Well and as agreed to at the Supervisor's Conference on July 10, 1984, are reasonable and accurate.

16. That the map labeled "Total Pore Volume as Amended" dated July 13, 1984, as supported by Exxon Company, U.S.A.; Hatters Alabama Company and Leboc Mobile Company; Mobile County Board of School Commissioners; and Getty Oil Company, represents a consensus of the parties and is consistent with the pore volume mapping techniques as directed by Board Order 83-170. The map labeled "Total Pore Volume as Amended" dated July 13, 1984, accurately represents the pore volume changes required by the drilling and completion of the S.M. Adams 9-16 Well and was used to redetermine the pore volume assignment for each tract in the proposed Hatter's Pond Field unit. The pore volume assigned for each tract is shown in the column labeled "Supervisor's Conference Consensus Map" on Exhibit A, which is attached hereto and made a part of this Order. These redetermined pore volume assignments are fair and equitable and will protect the coequal and correlative rights of all the mineral interest owners. Therefore, the Radcliff Smackover pore volume map is inappropriate as the map to be used for determining the amount of Smackover pore volume present in the area of Section 9, Township 2 South, Range 1 West, Mobile County, Alabama.

17. That the Arden A. Anderson, Dominex, Inc., et al. Smackover structure map (dated July 20, 1984) is technically inaccurate and inappropriate as the map to be used for determining the amount of total pore volume present in the area of Section 9, Township 2 South, Range 1 West, Mobile County, Alabama.

PARTICIPATION FORMULA

Finding 15 of Board Order 83-170 states that a tract's average daily production rate, as determined from a well's best month of production on the tract, is appropriate as a productivity factor for a Hatter's Pond Field Unit. The Board found that this productivity factor, in proper combination with a pore volume factor, would more accurately determine a tract's relative contribution than would a pore volume factor alone. The Board also found that a fair and reasonable tract participation formula for a Hatter's Pond Field Unit is a formula that consits of a 60 percent pore volume factor and a 40 percent productivity factor (Finding 16, Board Order 83-170).

Paul M. Brown, et al. petitioned the Board to unitize the Hatter's Pond Field based on a participation formula consisting of 75 percent pore volume and 25 percent productivity. Brown contends that pore volume as a factor should be given more weight than it was afforded in Board Order 83-170.

Hatters Alabama Company and Leboc Mobile Company petitioned the Board to amend the participation formula enunciated in Board Order 83-170 to a participation formula based 60 percent on pore volume and 40 percent on productivity with productivity defined as a tract's average daily production rate as determined from a well's best month of production on the tract during the period beginning January 1, 1983, and ending February 29, 1984. Hatters-Leboc contend that such a participation formula would more accurately represent what each tract would contribute to the proposed Hatter's Pond Field Unit.

AMAX Petroleum Corporation contends that a productivity factor in a participation formula for a Hatter's Pond Field Unit should be given considerable weight. AMAX argues that the participation formula as enunciated in Board Order 83-170 does not give sufficient pore volume credit to Section 35, Township 1 South, Range 1 West, in the proposed Hatter's Pond Field Unit.

Getty Oil Company, as directed by the Board, has presented a new petition to unitize the Hatter's Pond Field with the participation formula as enunciated in Finding 16 of Board Order 83-170. This formula consists of the 60 percent pore volume factor and the 40 percent productivity factor. Getty maintains that this participation formula is fair and reasonable, and will protect the coequal and the correlative rights of all the mineral interest owners. Getty contends that any modifications to the participation formula are uncalled for, and unsupported by any new evidence. Getty witnesses testified that the participation formulas proposed by Brown and Hatters-Leboc will increase the interests of the proposing parties at the expense of other owners in the proposed unit. Expert witnesses for Getty argue that the limited time period suggested by Hatters-Leboc would be less representative of tract contribution than the time defined in Board Order 83-170 because of such factors as scale and/or salt buildup, corrosion, time of initial completion, time of stimulation, varying perforated intervals, and plant capacity. Getty further maintains that AMAX presented no maps or other geological evidence to indicate that there is more pore volume underlying Section 35, Township 1 South, Range 1 West, than as shown on the total pore volume map (Getty Exhibit 15, Docket No. 4-11-841).

FINDINGS

After having heard all the testimony and after carefully reviewing all the evidence in regard to participation formula, the Board finds:

18. That the voluminous record now assembled on the Hatter's Pond Field unitization hearings (Docket Nos. 8-19-821 and 4-11-841, 4-11-842, 4-11-843, 4-11-844, 4-11-845, and 4-11-846A) contains considerable testimony and evidence from various parties regarding the factors that should be used in the participation formula for unitization. Factors suggested for use included pore volume, cumulative production, highest tested capacity, productive surface acres, average daily production, pressure adjustment factors, and state of depletion.

19. That the Board considered substantial evidence and testimony concerning various factors that should be used in the participation formula for the unitization of the Hatter's Pond Field. These factors included, but were not limited to, those that were presented and testified to during the previous hearings (Docket No. 8-19-821) and at these hearings (Docket Nos. 4-11-841 through 4-11-846A). Also, the Board considered the weight and the merits of each factor in determining a fair and reasonable participation formula in the issuance of Board Order 83-170 and in the issuance of this Order.

20. That during the previous Hatter's Pond unitization hearings (Docket No. 8-19-821) and during these hearings (Docket Nos. 4-11-841 through 4-11-846A), the Board was presented with evidence, including graphs depicting the month-by-month production from wells in the Hatter's Pond Field. Many of the graphs presented during these hearings (Docket Nos. 4-11-841 through 4-11-846A) were either identical to or were modifications of the graphs presented at the previous Hatter's Pond unitization hearings (Docket No. 8-19-821). Also, monthly production records which include full well stream production from all wells in the Hatter's Pond Field (State Oil and Gas Board Form OGB-15, Producer's Monthly Report from Gas Wells) are on file with the Board and the information was made a part of the record in Docket Nos. 8-19-821 and 4-11-841 through 4-11-846A and carefully considered by the Board in the issuance of Order 83-170 and in the issuance of this Order.

21. That the participation formula enunciated in Finding 16 of Board Order 83-170 was determined after careful consideration of voluminous quantities of production and operating data. Production and operating data are continually being generated in the Hatter's Pond Field and, if unitization of this field is to be accomplished, the Board must determine when sufficient quantities of such data are available so as to allow for the determination of the fair and equitable participation formula. Sufficient data are now available, and the consideration of any additional production, pressure, and operating data from the Hatter's Pond Field is not necessary for the field to be unitized in a fair and equitable manner.

22. That numerous participation formulas in addition to the 60-40 formula enunciated in Finding 16 of Board Order 83-170 were considered by this Board prior to the issuance of Board Order 83-170. These formulas included, but were not limited to, formulas consisting of 100 percent pore volume; of 75 percent pore volume and 25 percent productivity; and of 50 percent pore volume and 50 percent productivity.

23. That the fair and reasonable tract participation formula for the proposed Hatter's Pond Field Unit is the formula consisting of the 60 percent pore volume factor and the 40 percent productivity factor, as those factors are enunciated in Finding 16 of Board Order 83-170. The 60 percent pore volume factor is to be calculated from the consensus total pore volume map, labeled "Total Pore Volume as Amended" and dated July 13, 1984, which incorporates Interpretation "A", includes the data from the S. M. Adams 9-16 Well located in Section 9, Township 2 South, Range 1 West, and is consistent with the pore volume mapping techniques directed by Board Order 83-170. The 40 percent productivity factor is to be calculated from a tract's average daily production rate as determined from a well's best month of production on the tract through the last full month of production prior to the issuance of this Order, i.e. through September 30, 1984. Therefore, the monthly production

records, as reflected by the full well stream production, from all wells in the Hatter's Pond Field through September 30, 1984 (State Oil and Gas Board Form OGB-15, Producer's Monthly Report from Gas Wells) should be made a part of the record in Docket Nos. 4-11-841 through 4-11-846A. Tract participation as shown on Getty Exhibit 19 (Docket No. 4-11-841) which is attached hereto as Exhibit B to this Order, should be modified to protect the coequal and correlative rights of all the mineral interest owners because it does not include every tract's average daily production rate as determined from a well's best month of production on the tract through September 30, 1984, and does not include the data from the S.M. Adams 9-16 Well. Getty Oil Company should redetermine the productivity factor assignment for each tract and should recalculate the tract participation for each tract. Getty then should prepare an amended Exhbit B, which includes the pore volume assignment for each tract (shown on attached Exhibit A to this Order, in the column labeled "Supervisor's Conference Consensus Map"); a tabulation of the productivity assignment for each tract; and the tract participation for each tract. Getty should submit an amended Exhibit B to the Board within 15 days of the issuance of this Order. Amended Exhibit B should be attached to and made a part of this Order. The 60-40 participation formula as enunciated above will protect the coequal and correlative rights of all mineral interest owners, and is based upon the relative contribution which each tract or interest is expected to make during the course of unit operations. The inclusion in the proposed unit of Section 21, that portion of Section 22 lying north and west of the west right-of-way line of Interstate Highway I-65, and Section 28, all in Township 2 South, Range 1 West, Mobile County, Alabama does not change the fact that the 60-40 formula as enunciated above represents the fair and reasonable tract participation formula for the proposed Hatter's Pond Field Unit.

24. That Paul M. Brown, et al. presented insufficient evidence to warrant a change in either the 60 percent pore

volume factor or the 40 percent productivity factor comprising the participation formula as enunciated in Finding 16 of Board Order 83-170 and in Finding 23 of this Order. The 60-40 formula as enunciated in Finding 23 of this Order is the appropriate tract participation formula for the proposed Hatter's Pond Field Unit because it takes into account the spacing pattern of wells in the field, the heterogeneity of the reservoir, the pore space available for hydrocarbon storage, the production history of the wells in the field, and the relative contribution which each tract or interest is expected to make during the course of unit operations. Therefore, a participation formula with a 75 percent pore volume factor and a 25 percent productivity factor is inappropriate and would not represent what each tract or interest is expected to make during the course of unit operations.

25. That Hatters Alabama Company and Leboc Mobile Company presented insufficient evidence to warrant a change in either the 60 percent pore volume factor or the 40 percent productivity factor comprising the participation formula as enunciated in Finding 16 of Board Order 83-170 and in Finding 23 of this Order. The Hatters-Leboc proposed limited time period for the computation of the 40 percent productivity factor (beginning January 1, 1983 and ending February 29, 1984) does not adequately consider the varying dates that the wells were drilled, completed, worked over, treated, or the condition and status of the wells. The productivity factor, as defined in Finding 23 of this Order, adequately takes into account all the necessary parameters required to establish a fair and equitable productivity factor. Therefore, the limited time period for the computation of the 40 percent productivity factor, as proposed by Hatters-Leboc, is inappropriate and would not result in a participation formula that would be representative of what each tract or interest is expected to make during the course of unit operations.

26. That, as previously found by the Board in Finding 20 of Board Order 83-170, adjustments to pore volume for pressure-production history, remaining recoverable unitized substances, and present worth of unitized substances should not be made because these adjustments would not increase the accuracy of pore volume estimates of hydrocarbons or hydrocarbon value beneath each tract in the Hatter's Pond Field. The evidence presented at these hearings (Docket Nos. 4-11-841 through 4-11-846A) is insufficient to warrant altering this finding. Therefore, Finding 20 of Board Order 83-170 is reaffirmed.

27. That any adjustments or modifications to the participation formula consisting of the 60 percent pore volume factor and the 40 percent productivity factor, as enunciated in Findings 15 and 16 of Board Order 83-170 and in Finding 23 of this Order, would neither be advantageous nor necessary for the Hatter's Pond Field to be unitized in a fair and equitable manner, and such adjustments would not protect the coequal and correlative rights of all the mineral interest owners. Therefore, Findings 15 and 16 of Board Order 83-170 are reaffirmed.

28. That, as previously found by the Board in Finding 21 of Board Order 83-170, the Petitioner (Getty Oil Company), in the mapping of pore volume for tract 3500 (Section 35, Township 1 South, Range 1 West) in the proposed Hatter's Pond Field Unit, used the best available data for the determination of the pore volume attributable to said tract (Section 35). AMAX Petroleum Corporation failed to present maps or credible evidence to indicate that there is more pore volume underlying Section 35, Township 1 South, Range 1 West, than as shown on the consensus total pore volume map labeled "Total Pore Volume as Amended" and dated July 13, 1984, that resulted from the Supervisor's Conference of July 10, 1984. Therefore, Finding 21 of Board Order 83-170 is reaffirmed.

29. That the wells in the Hatter's Pond Field have been operated in a prudent manner, and no wells have been unduly penalized by primary production practices.

STATE OF DEPLETION-SEPARATE RESERVOIRS-PRESSURE SURVEYS

In Finding 20 of Board Order 83-170 the Board states that adjustments to pore volume for pressure-production history, remaining recoverable unitized substances, and present worth of unitized substances should not be made because these adjustments would not increase the accuracy of pore volume estimates of hydrocarbons or hydrocarbon value beneath each tract in the Hatter's Pond Field.

Arden A. Anderson, Dominex, Inc., et al. filed a petition requesting a continuance of the unitization hearings and to require fieldwide bottom hole pressure build-up surveys in the Hatter's Pond Field. Anderson-Dominex contend that this evidence is needed to confirm that there are multiple reservoirs in the Hatter's Pond Field in different stages of depletion, and that the state of depletion of each reservoir must be determined and included in any participation formula. Anderson-Dominex maintain that the heterogeneity of the Smackover Formation in the Hatter's Pond Field demonstrates the existence of separate reservoirs.

An engineering witness for Anderson-Dominex proposed a correlation of shutin surface pressure build-up surveys with bottom hole pressure build-ups in lieu of measured bottom hole pressure build-up surveys when measured bottom hole pressure build-up surveys cannot be obtained because of various wellbore problems or because of high risks and costs.

Hatters Alabama Company and Leboc Mobile Company contend that the productivity factor as proposed by Hatters-Leboc would be more representative of the state of depletion of a tract than the productivity factor as defined in Board Order 83-170.

Paul M. Brown, et al. contend that the risk of losing wells is too great and that no new evidence would be obtained from ad-

ditional fieldwide bottom hole pressure build-up surveys. Brown maintains that the Anderson-Dominex petition will further delay unitization of the Hatter's Pond Field.

Getty Oil Company's technical witnesses contend that there is no evidence of separate mappable reservoirs in the proposed Hatter's Pond Field Unit and that adjustments to pore volume for pressure-production history and remaining recoverable reserves should not be made because these adjustments would not increase the accuracy of pore volume estimates of hydrocarbons beneath each tract. Getty maintains that additional fieldwide bottom hole pressure build-up surveys would be unduly costly and could result in the loss of a well or wells. Getty further contends that bottom hole pressures would only relate to the performance of wells and would not assist in the measurement of what a tract is expected to contribute to unit production. Getty also maintains that no evidence was presented to demonstrate the accuracy of extrapolated shut-in bottom hole pressures using the Anderson-Dominex procedures.

FINDINGS

After having heard all the testimony and after carefully reviewing all the evidence in regard to pressure surveys, separate reservoirs, and state of depletion, the Board finds:

30. That the Board in Finding 20, Order 83-170 found that the weight of evidence indicated that adjustments to pore volume for pressure-production history, remaining recoverable unitized substances, a d present worth of unitized substances should not be made because these adjustments would not increase the accuracy of pore volume estimates of hydrocarbons or hydrocarbon value beneath each tract in the Hatter's Pond Field. The evidence presented at these hearings (Docket Nos. 4-11-841 through 4-11-846A) is insufficient to justify altering this finding.

31. That a correlation of shut-in surface pressures with shut-in bottom hole pressures has not been proven sufficiently accurate to be used in lieu of bottom hole pressure build-up surveys for wells in the Hatter's Pond Field.

32. That with the history of nine years of production and the voluminous amounts of pressure data obtained, additional fieldwide bottom hole pressure build-up surveys or any other pressure surveys are not needed to assist in determining the relative contribution which each tract or interest is expected to make during the course of unit operations.

33. That mechanical failures have occurred in the Hatter's Pond Field during the performance of bottom hole pressure build-up surveys that have necessitated reworking operations on certain wells and, on a few occasions, have even required that a well be sidetracked or redrilled (Board Order 82-91, page 2, paragraph III).

34. That the running of additional fieldwide bottom hole pressure build-up surveys in the Hatter's Pond Field will cause the working interest owners to incur undue and unnecessary risks and expenses, could result in the loss of a well or wells, and could result in the drilling of an unnecessary well or wells.

35. That additional fieldwide bottom hole pressure build-up surveys would be neither advantageous nor necessary for the Hatter's Pond Field to be unitized in a fair and equitable manner to all owners of interest in the field, and the running of such pressure build-up surveys would significantly delay unitization, cause substantial waste, and would not protect the coequal and correlative rights of all the mineral interest owners.

36. That because of the heterogeneity of the Hatter's Pond Field reservoir and the large variations among the wells with respect to the thickness of pay encountered, the amount of pay perforated, and the depths of the perforations, bottom hole pressure surveys cannot be used to determine the relative con-

tribution that each tract or interest is expected to make during the course of unit operations.

37. That Board Order 83-170 recognized the heterogeneity of the Hatter's Pond Field reservoir and the evidence presented at these hearings (Docket Nos. 4-11-841 through 4-11-846A) does not indicate that such heterogeneity results in separate mappable reservoirs. No credible evidence has been presented by any of the parties at these hearings (Docket Nos. 4-11-841 through 4-11-846A) or the previous hearings (Docket No. 8-19-821) to prove the existence of separate mappable reservoirs in the Hatter's Pond Field.

38. That the evidence presented by Arden A. Anderson, Dominex, Inc., et al., Hatters Alabama Company and Leboc Mobile Company, and AMAX Petroleum Corporation does not demonstrate that there are separate mappable reservoirs in the Hatter's Pond Field. After this Board was ordered by the Circuit Court of Tuscaloosa County (Civil Action No. CV84-252) to hear the new evidence of Arden A. Anderson, Dominex, Inc., et al., witnesses for Anderson-Dominex adopted exhibits prepared by Hatters Alabama Company and Leboc Mobile Company that were presented at the previous hearings (Docket No. 8-19-821) and considered by the Board prior to the issuance of Board Order 83-170.

UNIT AREA: INCLUSION OF PORTIONS OF SECTIONS 25, 26, AND 36, TOWNSHIP 1 SOUTH, RANGE 1 WEST, MOBILE COUNTY, ALABAMA

The productive limit in part of the northern area of the Hatter's Pond Field was a topic of considerable controversy and debate during the Board's hearing of Docket No. 8-19-821. During that hearing, Richland Exploration Company, Inc. presented technical exhibits and testimony in support of including a portion of Section 36, Township 1 South, Range 1 West, Mobile County, Alabama, within a proposed field unit.

Based upon geological data and evidence presented on his behalf at that hearing, Dr. Gerald Wallace maintained that parts of Sections 25, 26, and 36, Township 1 South, Range 1 West, Mobile County, Alabama, lie within the productive limit and should, therefore, be included in a proposed field unit.

After hearing many hours of testimony and examining well data and many technical exhibits, the Board, in Order 83-170, specifically addressed the issue of including portions of Sections 25, 26, and 36 within a proposed field unit. The Board made specific findings and concluded that insufficient technical data were submitted to justify including into a proposed unit any portions of Sections 25, 26, and 36 (Order 83-170, Findings 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35). A determination was made by the Board that the evidence did not support any alteration of the northern limit of Getty Oil Company's originally proposed unit area, and that the inclusion of any portions of Sections 25, 26, and 36 would unjustly dilute the mineral interests and would not protect the correlative rights of the mineral interest owners. The northern productive limit as proposed by Getty was agreed to during the meeting of the earlier Unitization Geological Sub-Committee, and the Board found that this northern productive limit was determined by valid interpretations of all well data and good mapping concepts and techniques.

Following the issuance of Board Order 83-170, Dr. Wallace commissioned a seismic line to be run through an area that traverses the southern portion of Section 25, the central portion of Section 26, the northern portion of Section 27, and continues in a west-northwesterly direction into the central portion of Section 20, all in Township 1 South, Range 1 West, Mobile County, Alabama. Dr. Wallace also employed experts trained in the fields of geophysical seismic interpretation and computer modeling to interpret the data from that seismic line, hereinafter referred to as line L-1.

Dr. Wallace contends that the findings of Board Order 83-170 are against the weight of the evidence presented at the hearings in Docket No. 8-19-821, and that the data provided by his seismic line L-1 support the structural geologic maps submitted in support of his case during the hearings in Docket No. 8-19-821 and during the more recent unitization hearings (Docket Nos. 4-11-841 through 4-11-846A). He believes that portions of Sections 25, 26, and 36 are underlain by hydrocarbons and that the productive limit of the field may even extend farther north to include part of Section 24, Township 1 South, Range 1 West, Mobile County, Alabama. He maintains that it is not economically feasible to drill a well in the area of Section 25, Township 1 South, Range 1 West; that there has been drainage of hydrocarbons from this area; and that the drilling of a well in the area of Section 25 is unnecessary and would constitute waste in direct contravention of the oil and gas laws of Alabama.

Geophysical seismic and computer modeling specialists testified that the data from line L-1 support the geological structure maps previously submitted on behalf of Dr. Wallace. The Smackover and Norphlet reflectors as identified on Wallace Exhibits B-3 and B-3A (line L-1) appear to display an eastward dip of the Smackover and Norphlet Formations into the large down-to-the-east fault. Dr. Wallace's expert witnesses, however, maintain that the apparent eastward dip of these formations is due to a "fault shadow" or velocity pushdown phenomenon, which, in this particular instance, requires a 1,300 foot upward correction beneath the fault. According to the testimony of these witnesses, if such a vertical correction were applied to the seismic data, the Smackover and Norphlet Formations beneath the fault would then lie structurally higher than the -18,300 foot depth for the lower limit of production and the dip would then actually be toward the west and away from the fault.

An expert in the field of seismic interpretation testified on behalf of Getty Oil Company that Dr. Wallace's witnesses failed to account properly for the differing interval velocities on the upthrown side versus the downthrown side of the fault seen on line L-1. According to the Getty witness, the velocity assumptions used by Dr. Wallace's witnesses were erroneous, as would be any vertical correction of the data to alter the apparent east dip to show west dip. Evidence including a seismic line (line 1183), which is located within the proven productive limit of the field, was submitted by Getty for the purpose of demonstrating that dip direction and rates as seen on seismic lines in this area do not require the type of vertical correction and adjustment such as that made on line L-1 by Dr. Wallace's seismic specialists.

Getty maintains that no new evidence has been presented to justify any changes in the proposed Hatter's Pond Field Unit area north of Section 21, Township 2 South, Range 1 West as set forth in Board Order 83-170, and that a reasonable interpretation of all subsurface data precludes the inclusion of portions of Sections 25, 26, and 36 in a Hatter's Pond Field Unit. Getty argues that the economic data presented on behalf of Dr. Wallace clearly contain computation errors, and that, if the other technical exhibits submitted for Dr. Wallace are assumed to be accurate, then it would be a highly profitable venture to drill a well on the acreage in question. Representatives for Getty also contend that, if such a well encountered hydrocarbons and the acreage is proven to be underlain by an extension of the unitized formation of the Hatter's Pond Unit, then Section 9-17-85 of the *Code of Alabama* (1975) would clearly allow unit enlargement to incorporate the acreage into the unit.

FINDINGS

After having heard all the testimony and after carefully reviewing all the evidence concerning the inclusion of portions of Sections 25, 26, and 36, Township 1 South, Range 1 West,

Mobile County, Alabama, in a Hatter's Pond Field Unit, the Board finds:

39. That Dr. Wallace failed to provide a definitive and acceptable method for determining the boundary of the reservoir that he contends is present in the area of Sections 25, 26, and 36, Township 1 South, Range 1 West. He further did not provide a definitive and acceptable method for determining the exact amount of productive acreage that he contends is not already included in a producing unit of the Hatter's Pond Field. Dr. Wallace has left to the discretion of the Board these critical determinations and the exact tract participation for Sections 25, 26, and 36, should the evidence prove that portions of these sections are underlain by recoverable hydrocarbons of the Hatter's Pond Field reservoir. However, there is no need to determine a tract participation for these sections because the evidence does not prove that hydrocarbons are present beneath any portions of these sections.

40. That the testimony and evidence, including the location, interpretation, and computer modeling of seismic line L-1, does not establish that the Hatter's Pond Field structure and hydrocarbon pool are present beneath any portions of Sections 25, 26, and 36, Township 1 South, Range 1 West.

41. That the geological data provided by wells and the data provided by seismic line L-1 are insufficient to establish that reservoir grade zones of porosity are present beneath any portions of Sections 25, 26, and 36, Township 1 South, Range 1 West.

42. That the weight of the evidence presented in the hearing of Docket No. 8-19-821 clearly supports Findings 26 through 35 in Board Order 83-170 which pertain to Sections 25, 26, and 36, Township 1 South, Range 1 West and the northernmost productive limit of the Hatter's Pond Field reservoir.

43. That the exhibits and testimony relating to and resulting from the data provided by seismic line L-1 and all other

available data do not alter Findings 26 through 35 in Board Order 83-170 regarding the northernmost productive limit of the Hatter's Pond Field reservoir. Therefore, Findings 26 through 35 of Board Order 83-170 are reaffirmed.

44. That the weight of the evidence supports the productive limit of the proposed Hatter's Pond Field Unit as set forth in Board Order 83-170 and as proposed by Getty Oil Company for the area north of Section 21, Township 2 South, Range 1 West, Mobile County, Alabama.

45. That the evidence presented at these hearings (Docket Nos. 4-11-841 through 4-11-846A) and at the previous hearings (Docket No. 8-19-821) and the technical data available from the Hatter's Pond Field are insufficient to justify including any portions of Sections 25, 26, and 36, Township 1 South, Range 1 West, in the Hatter's Pond Field Unit. The inclusion of any portions of these sections would not protect the coequal and correlative rights of all the mineral interest owners, because such inclusion would unjustly dilute the mineral interests in those tracts that have been proven to be underlain by recoverable hydrocarbons by substantial evidence and technical data.

UNIT AREA: INCLUSION OF PORTIONS OF SECTIONS 27 AND 28, TOWNSHIP 1 SOUTH, RANGE 1 WEST, AND PORTIONS OF SECTIONS 8, 11 AND 22, TOWNSHIP 2 SOUTH, RANGE 1 WEST, MOBILE COUNTY, ALABAMA

Getty Oil Company's expert witnesses testified that portions of Sections 27 and 28, Township 1 South, Range 1 West and portions of Sections 8, 11, and 22, Township 2 South, Range 1 West, Mobile County, Alabama, are underlain by recoverable hydrocarbons as indicated by the nearby well control, the data obtained by the drilling of wells, and a reasonable interpretation of the productive limit of the proposed Hatter's Pond Field Unit. Getty further testified that portions of these sections will contribute to unit operations, and therefore should share in unit production because those tracts do not contain sufficient productive acreage of pore volume to justify or require a well thereon.

Arden A. Anderson, Dominex, Inc., et al. contend that no property should be included in the proposed unit area that is not now included within a developed area (producing unit).

Dr. Gerald Wallace maintains that the inclusion of portions of Sections 27 and 28, Township 1 South, Range 1 West and portions of Sections 8, 11, and 22, Township 2 South, Range 1 West, Mobile County, Alabama, in the proposed Hatter's Pond Field Unit is no different than his proposal for including portions of Sections 25, 26, and 36, Township 1 South, Range 1 West, Mobile County, Alabama.

Expert witnesses for Getty testified that there are significant differences in Dr. Wallace's proposal to include portions of Sections 25, 26, and 36, Township 1 South, Range 1 West as compared to the inclusion of portions of Sections 27 and 28, Township 1 South, Range 1 West and portions of Sections 8, 11, and 22, Township 2 South, Range 1 West. Getty maintains that only small portions of Sections 27, 28, 8, 11, and 22 are included within the productive limit of the Hatter's Pond reservoir; and it is the productive limit within the tract, not the boundary of the unit area surrounding the tract that determines the tract's participation in the unit. The witnesses also testified that the portions of Sections 27, 28, 8, 11, and 22 that are in the proposed Hatter's Pond Field Unit were included on the basis of nearby well control and a reasonable interpretation of the boundary of the productive limit of the proposed unit as based on the geologic interpretations by the earlier Unitization Geological Sub-Committee, whereas there is no well control to justify including portions of Sections 25, 26, and 36.

FINDINGS

After having heard all of the testimony and after carefully reviewing all the evidence to ascertain if portions of Sections 27 and 28, Township 1 South, Range 1 West, Mobile County, Alabama, and portions of Sections 8, 11, and 22, Township 2

South, Range 1 West, Mobile County, Alabama, should be included in the proposed unit area, the Board finds:

46. That the weight of the geologic and engineering evidence supports Getty Oil Company's position that recoverable hydrocarbons underlie portions of the Southeast Quarter of Section 8 and the Northwest Quarter of Section 11, Township 2 South, Range 1 West, and portions of the Southwest Quarter of Section 27 and the South Half of Section 28, Township 1 South, Range 1 West. Because portions of Sections 8, 11, 27, and 28 will contribute to unit operations, but do not contain sufficient productive acreage or pore volume to justify the drilling of a well thereon, they should be included in the proposed unit area in order to protect the coequal and correlative rights of all the mineral interest owners. The productive limit of the proposed unit, as set forth in Finding 25 of Board Order 83-170 for the proposed Hatter's Pond Field Unit north of Section 21, Township 2 South, Range 1 West, Mobile County, Alabama, is reaffirmed.

47. That the Smackover and Norphlet net pay isopach and total pore volume interpretations ("A" and "B") resulting from the Geological/Geophysical Sub-Committee and the Smackover and Norphlet net pay isopach interpretations of Arden A. Anderson, Dominex, Inc., et al. for the southern part (Sections 21, 22, and 28, Township 2 South, Range 1 West) of the proposed Hatter's Pond Field Unit illustrate that a part of Section 22, Township 2 South, Range 1 West is underlain by recoverable hydrocarbons. Interpretations "A" and "B" both indicate pore volume to be present in part of the northwest quarter of this Section. Part of the northwest quarter of Section 22, Township 2 South, Range 1 West (as shown on Exhibit C which is attached hereto and made a part of this Order) should not be excluded from the proposed unit, because the exclusion of this area would result in confiscation of the property of the mineral interest owners.

48. That the evidence clearly demonstrates the necessity to include portions of Sections 27 and 28, Township 1 South, Range 1 West and portions of Sections 8, 11 and 22, Township 2 South, Range 1 West in the proposed Hatter's Pond Field Unit. Therefore, the productive limit of the proposed Hatter's Pond Field Unit should be as shown on Exhibit C which is attached to this Order. The establishment of this productive limit for the proposed unit area is necessary in order to protect the coequal and correlative rights of all mineral interest owners.

PRESSURE MAINTENANCE — GAS CYCLING

Getty Oil Company presented expert testimony that gas cycling secondary recovery operations in the proposed Hatter's Pond Field Unit, with Sections 21 and 28, Township 2 South, Range 1 West, included in the proposed unit, and beginning January 1, 1986, would recover an estimated additional 9,874,657 Mcf of sales gas and 15,904,247 barrels of liquid hydrocarbons. An expert engineering witness for Getty presented standard economics of gas cycling operations using a 5 percent inflation factor for cost and sales prices and a 10 percent present worth discount factor. These economic data show that an estimated additional investment of $114,708,978 and estimated additional operating costs of $225,342,932 will yield estimated additional working interest gross revenue of $1,077,985,860 for an additional working interest net revenue f $737,933,950 having a present worth of $116,883,070; that the royalty owners will receive an estimated additional gross revenue of $162,504,198 having a present worth of $39,933,579; and that the State of Alabama will receive an estimated additional $124,049,006 in taxes having a present worth of $30,483,648.

A witness for AMAX Petroleum Corporation stated that Getty's economic projections yielded a discounted cash flow rate of

return of 18 percent and that 18 percent was a marginal rate of return. AMAX also contends that a 5 percent escalation of sales prices over the entire 25-year period is too high.

FINDINGS

After having heard all the testimony and after having carefully reviewed the evidence in regard to the need for and the economic feasibility of pressure maintenance by gas cycling, the Board finds:

49. That the evidence presented by Getty Oil Company establishes that additional hydrocarbons will be recovered by gas cycling secondary recovery operations from the proposed Hatter's Pond Field Unit.

50. That evidence presented by Getty Oil Company establishes the profitability of gas cycling secondary recovery operations for the proposed Hatter's Pond Field Unit.

51. That the estimated total cost of conducting secondary recovery operations in the proposed Hatter's Pond Field Unit will not exceed the value of the estimated total additional hydrocarbons to be recovered through enhanced recovery methods.

52. That, in order to prevent waste and the irrevocable loss of hydrocarbons and to protect the coequal and correlative rights of all mineral interest owners, gas cycling secondary recovery operations should be conducted in the Hatter's Pond Field.

NEED FOR UNITIZATION

The need for unitization in the Hatter's Pond Field was addressed in great detail during the Board's hearing of Docket No. 8-19-821. During that hearing, expert witnesses for Getty Oil Company presented numerous technical exhibits and considerable testimony setting forth the reasons and necessity for unitization. Furthermore, no party presented evidence to refute

Getty's position that unitization of the Hatter's Pond Field is needed for the purpose of initiating and maintaining a partial pressure maintenance program.

After hearing the testimony and carefully reviewing all pertinent evidence, the Board, in Order 83-170, made specific findings regarding the need for unitization and concluded that there is an unquestionable need for the Hatter's Pond Field to be unitized (Finding 2, Board Order 83-170). The Board further found that unitization is necessary because of the unique geologic characteristics of the Hatter's Pond Field and the hostile geologic environment for drilling and production evident therein. Unitization would be beneficial for the continuation of successful primary recovery operations and is needed for the successful initiation and maintenance of secondary recovery operations. Unitization is necessary in order to prevent the potential loss of recoverable hydrocarbons and in order to prevent the drilling of unnecessary wells (Findings 5, Board Order 83-170).

Determinations were made by the Board in Order 83-170 that unitization of the Hatter's Pond Field is in the interest of conservation (Finding 6, Board Order 83-170) and that an undue delay of unitization and the initiation of enhanced recovery procedures will result in the irrevocable loss of hydrocarbons and potential harm to the reservoir (Finding 7, Board Order 83-170).

FINDINGS

After all the testimony and after carefully reviewing all the evidence concerning the need for unitization in the Hatter's Pond Field, the Board finds:

53. That no party at the previous hearings (Docket No. 8-19-821) and no party at these hearings (Docket Nos. 4-11-841, 4-11-842, 4-11-843, 4-11-844, 4-11-845, 4-11-846A) presented credible evidence to refute Getty's position that unitization of the Hatter's Pond Field is needed for the purpose of initiating

and maintaining a partial pressure maintenance program. Therefore, Finding 3 of Board Order 83-170 is reaffirmed.

54. That unitization is necessary in order to prevent the potential loss of recoverable hydrocarbons and in order to prevent the drilling of unnecessary wells in the proposed Hatter's Pond Field Unit. Unitization is also necessary because of the unique geologic characteristics of the Hatter's Pond Field and the hostile geologic environment for drilling and production evident therein. Unitization would be beneficial for the continuation of successful primary recovery operations and is needed for the successful initiation and maintenance of secondary recovery operations. Therefore, Finding 5 of Board Order 83-170 is reaffirmed.

55. That unitization of the Hatter's Pond Field is in the interest of conservation, and secondary recovery will result in an appreciable increase in the recovery of hydrocarbons from said field. The increased recovery of hydrocarbons from the field is in the best interest of the mineral interest owners and the State of Alabama. Therefore, Finding 6 of Board Order 83-170 is reaffirmed.

56. That commencement of unit operations is necessary to prevent waste, to increase the recovery of hydrocarbons, and to protect the coequal and correlative rights of all the mineral interest owners.

SPECIAL FIELD RULES, UNIT AGREEMENT, UNIT OPERATING AGREEMENT, AND RATIFICATION AGREEMENT

Getty Oil Company submitted evidence that the Special Field Rules for the Hatter's Pond Field should be amended so as to address unit operations and submitted an amended set of Special Field Rules for the Hatter's Pond Field (Getty Exhibit 35, Docket No. 4-11-841).

Getty's witnesses testified that the proposed plan of unit operations in the Unit Agreement and the Unit Operating Agreement should be approved. Getty also requested that the form of the ratification agreement be approved.

The Board, in Order 83-170, found that Article 11.1 (Enlargement of the Unit Area and Unitized Formation), subparagraph (d) should be deleted from the final Unit Agreement. Subsequently, Getty revised said Unit Agreement to comply with Finding 41, Board Order 83-170.

Board Order 83-170 provided that the productivity factor in the participation formula shall be determined prior to the effective date of unit operations (Finding 16, Board Order 83-170). The Getty Hatter's Pond Unit Agreement provides in paragraph 5.1.2 that the productivity factor determination be made prior to the date the order is issued by the State Oil and Gas Board approving said agreement. George Radcliff contends that Paragraph 5.1.2 in Getty's proposed Unit Agreement is inconsistent with Finding 16 of Board Order 83-170. Radcliff maintains that adherence to Finding 16 of Board Order 83-170 is necessary to provide for a proper productivity factor assignment for Section 9, Township 2 South, Range 1 West, Mobile County, Alabama.

FINDINGS

After hearing all of the testimony and after carefully reviewing all the evidence pertaining to the proposed amendments of the Special Field Rules for the Hatter's Pond Field, to the Unit Agreement, to the Unit Operating Agreement, and to the form of the Ratification Agreement, the Board finds:

57. That the amended Special Field Rules for the Hatter's Pond Field, attached hereto as Exhibit D and made a part of this Order, are fair and reasonable, and should be adopted for unit operations.

58. That Getty Oil Company's proposal to determine the productivity factor for each tract prior to the date the order is

issued by the State Oil and Gas Board approving the Hatter's Pond Unit Agreement (Paragraph 5.1.2, Unit Agreement) is consistent with Finding 16 in Board Order 83-170. Finding 16 states that the productivity factor of the participation formula shall be determined prior to the effective date of unit operations. As stated in Finding 23 of this Order, the calculation of a tract's average daily production rate as determined from a well's best month of production on the tract through the last full month of production prior to the issuance of this Order, i.e. through September 30, 1984, protects the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit. Therefore, amended Exhibit B, as identified in Finding 23 of this Order, should be attached to and should become Exhibit "A" to the Unit Agreement and Unit Operating Agreement.

59. That the Unit Agreement and the Unit Operating Agreement, which are attached hereto as Exhibit E and Exhibit F, incorporate the provisions of Section 9-17-83 of the *Code of Alabama* (1975). Therefore, they should be adopted and made a part of this Order.

60. That the form of the Ratification Agreement, which is attached hereto as Exhibit G, should be approved and made a part of this Order.

DISCOVERY

Consideration of the need to form a unit in the Hatter's Pond Field for the purpose of, among other things, conducting secondary recovery operations in the field, has been before this Board since May 31, 1982, when Getty Oil Company filed a petition (Docket No. 7-1-821) with this Board for an order approving and establishing such a unit within the Hatter's Pond Field, Mobile County, Alabama. A hearing was scheduled on this petition for July 1, 1982, and a prehearing conference was held on June 21, 1982, which was attended by numerous parties interested in the Hatter's Pond Field. Thereafter, at the request

of Getty, the hearing on this petition was postponed (Board Order No. 82-127), and on July 20, 1982, Getty filed with this Board a revised petition (Docket No. 8-19-821) which was set for hearing on August 19, 1982. Prior to the first hearing on this petition, Hatters Alabama Company and Leboc Mobile Company responded to the Getty petition by proposing a plan of unitization in the Hatter's Pond Field that included property in addition to that included within the unit being proposed by Getty. At a special meeting of this Board held in Mobile, Alabama, on August 19, 1982, the hearing on the petition filed by Getty and on the proposal submitted by Hatters-Leboc was continued so that all parties owning interests in the Hatter's Pond Field could be advised of the fact that the Board was holding hearings to consider the need for unit operations.

Commencing on November 8, 1982, and continuing until July 1, 1983, this Board held thirteen days of hearings to consider the Getty petition and the various alternative proposals submitted by other parties participating in those hearings, including the proposal by Hatters-Leboc. During the course of the hearings in Docket No. 8-19-821, various requests for documents and information were filed by parties participating in those proceedings. The Board received some requests to issue subpoenas requiring Getty to produce certain documents and information. Other requests were informal in nature and were addressed to Getty with copies provided to the Board. No subpoenas were issued by the Board in response to the requests, because the Board was informed that Getty voluntarily produced the documents and information requested by the parties and therefore, no action was required by the Board.

During the hearings in Docket No. 8-19-821, all parties involved in those proceedings were given extremely broad rights of cross-examination and were allowed to call, as witnesses, all persons they desired to question concerning the matters before the Board. Only one request for a subpoena to a witness was filed during those proceedings, and that request, which was filed

by Hatters-Leboc, was rendered moot by the voluntary agreement of Getty to make available the witness in question.

In Board Order 83-170, which was issued at the conclusion of the hearings in Docket No. 8-19-821, the Board required that Getty, after complying with certain directives contained in said Order, expeditiously file with this Board a petition requesting the establishment of a unit in the Hatter's Pond Field consistent with the findings and directives in Board Order 83-170. On February 10, 1984, Getty filed with this Board a petition (Docket No. 4-11-841) as required by Board Order 83-170. Shortly thereafter, five additional petitions (Docket Nos. 4-11-842, 4-11-843, 4-11-844, 4-11-845 and 4-11-846A) were filed with this Board relating to the unitization *vel non* of the Hatter's Pond Field or of some portion thereof. All of the petitions (Docket Nos. 4-11-841 through 4-11-846A) were set down for a special hearing before this Board on April 11, 1984, and a prehearing conference was held on March 30, 1984. After the conclusion of the hearing on April 11, additional hearings were held on these petitions on June 29 and 30, on July 5, 6, 7, 12, 13, and 14, and on August 10, 1984. The Board on August 10, 1984 continued these hearings through September 10, 1984, for the submission of Briefs and proposed orders. On September 10, 1984 the Board voted to take petitions bearing Docket Nos. 4-11-841 through 4-11-846A under advisement.

On March 21 and 28 and on April 9, 1984, Arden A. Anderson, Dominex, Inc., et al. filed with this Board various requests asking, *inter alia,* that subpoenas be issued to Getty requiring that certain documents and information be furnished, that certain Getty personnel be made available for depositions, and that Anderson-Dominex be allowed broad rights of discovery. On June 19, 1984, Hatters-Leboc filed with this Board a request that the Board require Getty to produce certain books, papers, and records, and further that the requested documents be produced at the office of the Board in Tuscaloosa, Alabama. On June 20, 1984, AMAX Petroleum Corporation filed a request with the Board virtually identical to the request filed by Hatters-

Leboc but asking that the requested documents be produced either at the Board's office in Tuscaloosa, Alabama, or in the Getty offices in New Orleans, Louisiana.

During the course of these proceedings, Getty voluntarily complied with all of the above-mentioned requests except that Getty refused: (a) to provide Anderson-Dominex with accounting documents showing revenue received from the S.M. Adams 9-10 Well (Permit No. 2199) (an abandoned well), royalty payments made out of that revenue, and expenses incurred in connection with that well; (b) to provide Anderson-Dominex with studies of cores from wells in the Hatter's Pond Field made by Getty's research department; (c) to provide Anderson-Dominex with seismic data owned by Getty covering property in the southern portion of the Hatter's Pond Field (Sections 21, 22, and 28, Township 2 South, Range 1 West, Mobile County, Alabama); and (d) to provide Anderson-Dominex, Hatters-Leboc, and AMAX with copies of documents showing Getty's economic evaluation of wells in the Hatter's Pond Field. Although Getty Oil Company did not fully comply with the four requests, Getty advised the Board that it did respond to the requests by furnishing or making available for inspection, at Getty's offices in New Orleans, Louisiana, the following information: (a) documents showing all production obtained from the S.M. Adams 9-10 Well, all operations performed on that well, and the estimated costs of those operations; (b) the actual cores taken from the wells in the Hatter's Pond Field; (c) all geological data obtained from the wells in the Hatter's Pond Field; and (d) Getty's reserve estimates for each well in the field.

Witnesses for Getty testified that the information it refused to furnish to Anderson-Dominex, Hatters-Leboc and AMAX is highly confidential and related to Getty's exploratory efforts. Representatives for Getty also stated that the parties requesting this information were Getty competitors.

FINDINGS

After hearing all the testimony and after carefully reviewing all of the discovery requests and evidence, the Board finds:

61. That the participants in these unitization hearings (Docket Nos. 4-11-841 through 4-11-846A) who have requested that the Board issue subpoenas and grant other discovery rights were also parties to the proceedings in Docket No. 8-19-821, except for a few of the petitioners named in the petition filed by Arden A. Anderson, Dominex, Inc., et al. All of the participants in Docket No. 8-19-821 should have been aware that proposals other than the proposal of Getty Oil Company were before the Board at that time, because the notice of those proceedings specifically stated that the Board might adopt a unitization order in those proceedings different from that requested by Getty Oil Company.

62. That requests for discovery filed in Docket No. 8-19-821 were voluntarily complied with by Getty Oil Company and all parties involved in those proceedings were given full and complete rights to examine and cross-examine all witnesses in those proceedings and to call any persons as witnesses whom they desired to call.

63. That all participants in the hearings in Docket Nos. 4-11-841 through 4-11-846A were given full and complete rights to examine and cross-examine all witnesses who testified during those hearings and to call, as witnesses, any persons whom they desired to call. The only requests for subpoenas to require the presence of witnesses at the present proceedings were filed by Dr. Gerald Wallace on July 13, 1984, and subpoenas requiring the presence of those witnesses at these proceedings were issued on that same day. However, Dr. Gerald Wallace failed to obtain service of those subpoenas. Although one of the witnesses to whom those subpoenas were directed was present at the meeting held by this Board on July 14, 1984, counsel for Dr. Gerald Wallace advised the Board that he did not intend to call that individual as a witness.

64. That the Board has been provided with ample information and sufficient data to make a decision on the Petitions presently before it.

65 That voluminous amounts of information and data have been produced during these hearings (Docket Nos. 4-11-841 through 4-11-846A) and the previous hearings (Docket No. 8-19-821), and all parties involved in all of these proceedings have been afforded an opportunity to examine all pertinent information and data relating to the unitization of the Hatter's Pond Field. Furthermore, all parties have had full opportunity to prepare and present their cases to the Board. The information that Getty Oil Company refused to provide those parties is not necessary to determine the issues presented before the Board.

66. That the discovery requests filed by Arden A. Anderson, Dominex, Inc., et al., Hatters Alabama Company and Leboc Mobile Company, and AMAX Petroleum Corporation were not filed in a timely manner and the granting of those requests would unduly delay the unitization of the Hatter's Pond Field.

67. That, although there are no formal discovery procedures set out in the regulations of the Board, the policy of the Board is to provide all parties before it with a full and fair hearing. The policy of the Board is not to deny reasonable requests for discovery; however, to the extent not already complied with, the discovery requests of Arden A. Anderson, Dominex, Inc., et al., Hatters Alabama Company and Leboc Mobile Company, and AMAX Petroleum Corporation are unreasonable, untimely, will result in waste, and will not protect the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit.

ORDER

IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED, AND DECREED BY THE STATE OIL AND GAS BOARD OF ALABAMA THAT:

1. The record in Docket No. 8-19-821 and the resulting Board Order 83-170 and the monthly production records which include full well stream production from all wells in the Hatter's Pond Field (State Oil and Gas Board Form OGB-15, Producer's Monthly Report from Gas Wells) through September 30, 1984, be made a part of the record in these proceedings (Docket Nos. 4-11-841, 4-11-842, 4-11-843, 4-11-844, 4-11-845, and 4-11-846A).

IT IS FURTHER ORDERED THAT:

2. Board Order 83-170, which is attached hereto as Exhibit H, be made a part of this Order.

IT IS FURTHER ORDERED THAT:

3. The petition bearing Docket No. 4-11-841 filed by Getty Oil Company be granted, subject to the provisions of this Order.

IT IS FURTHER ORDERED THAT:

4. The petition bearing Docket No. 4-11-842 filed by Paul M. Brown, et al. be denied.

IT IS FURTHER ORDERED THAT:

5. The petition bearing Docket No. 4-11-843 filed by Hatters Alabama Company and Leboc Mobile Company be denied.

IT IS FURTHER ORDERED THAT:

6. The petitions bearing Docket Nos. 4-11-844 and 4-11-845 filed by Dr. Gerald Wallace be denied.

IT IS FURTHER ORDERED THAT:

7. The petition bearing Docket No. 4-11-846A filed by Arden A. Anderson, Dominex, Inc., et al. be denied.

IT IS FURTHER ORDERED THAT:

8. To the extent not already complied with, all requests for discovery, including those by Arden A. Anderson, Dominex, Inc., et al., Hatters Alabama Company and Leboc Mobile Company, and AMAX Petroleum Corporation be denied.

IT IS FURTHER ORDERED THAT:

9. The Hatter's Pond Field Unit as propsed by Getty Oil Company in Docket No. 4-11-841 shall be known hereafter as the Hatter's Pond Unit. The Unit Area (as shown on Exhibit C which is attached hereto and made a part of this Order) for the Unitized Formation more specifically described below in the Hatter's Pond Unit, Mobile County, Alabama consists of the following described area:

In Township 1 South, Range 1 West:
Southwest Quarter (SW ¼) of Section 27; South Half (S ½) of Section 28; All of Sections 33, 34, and 35.

In Township 2 South, Range 1 West:
All of Sections 2, 3, and 4; Southeast Quarter (SE ¼) of Section 8; All of Sections 9 and 10; All of that part of the Northwest Quarter of the Northwest Quarter (NW ¼ of NW ¼) of Section 11 lying West of the West right-of-way line of the St. Louis-San Francisco Railroad, and all that part of the West Half of the Southwest Quarter of the Northwest Quarter (W ½ of SW ¼ of NW ¼) of Section 11 lying West of the West right-of-way line of the St. Louis-San Francisco Railroad; All of Sections 15, 16, 17, 21, and 28; That part of the Northwest Quarter (NW ¼) of Section 22 lying North and West of the West right-of-way line of Interstate Highway I-65.

10. The Unitized Formation shall be that portion of the subsurface underlying the Unit Area, containing porous and hydrocarbon productive Smackover-Norphlet Formation which is the stratigraphic equivalent of the interval between the Dual Induction - Laterolog depths of 17,988 feet and 18,429 feet in the Getty Oil Company - Peter Klein 3-14 Well No. 1 (Permit No. 1978), located in Section 3, Township 2 South, Range 1 West, Mobile County, Alabama, and shall also mean that portion of the subsurface underlying the Unit Area containing porous and hydrocarbon productive Smackover-Norphlet Formation which is the stratigraphic equivalent of the interval between the Dual Induction - Focused Log depths of 18,042 feet and 18,648 feet in the Getty Oil Company - Baldwin 21-15 Well No. 1 (Permit No. 3697), located in Section 21, Township 2 South, Range 1 West, Mobile County, Alabama or such other productive interval as may be ordered by the State Oil and Gas Board of Alabama.

11. All separate tracts, interests associated with tracts, and ownerships in the Unitized Formation in the Unit Area, including fee ownerships, mineral ownerships, royalty ownerships, oil and gas leasehold interests, and all other interests related to or carved out of any of the above, are hereby pooled, unitized and integrated as of the effective date of unitization. The owners of all of said tracts, interests and ownerships embraced within said Unit Area are hereby required to develop and operate their separately owned tracts and interests as a single unit consisting of the Unitized Formation for the production, development and operation of said lands as to said Unitized Substances in the Unitized Formation in such manner and to such effect as if all owners of said interests embraced within said Unit Area had voluntarily acquiesced in and agreed and consented to the unitization, integration, and pooling of said tracts and interests and in the manner and form as created.

12. The tract participation formula for the Hatter's Pond Unit shall be the formula consisting of the 60 percent pore

volume factor and the 40 percent productivity factor as enunciated in Finding 23 of this Order. Pore Volume is the acre feet of pore space in the Unitized Formation determined by multiplying the hydrocarbon bearing net pay (using cut-off points of 6% porosity and 0.1 millidarcy permeability) in the Unitized Formation by the average porosity of the net pay. The pore volume for each tract is as shown in the column labeled "Supervisor's Conference Consensus Map" on attached Exhibit A to this Order. Productivity is a tract's average daily production rate as determined from a weli's best month of production on the tract through September 30, 1984, as reflected by the full well stream production as shown by the monthly production recores from all wells in the Hatter's Pond Field (State Oil and Gas Board Form OGB-15, Producer's Monthly Report from Gas Wells). Getty Oil Company shall redetermine the productivity factor assignment as described above for each tract and shall recalculate the tract participation for each tract. Getty then shall prepare an amended Exhibit B, which includes the pore volume assignment for each tract (shown on attached Exhibit A, in the column labeled "Supervisor's Conference Consensus Map"); a tabulation of the productivity assignment for each tract; and the tract participation for each tract based on the 60 percent pore volume factor as shown on attached Exhibit A and the 40 percent productivity factor as described above. Getty shall submit an amended Exhibit B to the Board within 15 days of the issuance of this Order. Upon approval, amended Exhibit B shall then be the replacement for attached Exhibit B and amended Exhibit B shall be attached to and made a part of this Order.

13. The Unit Agreement, attached hereto as Exhibit E, and the Unit Operating Agreement, attached hereto as Exhibit F, are hereby approved and made a part of this Order. Upon approval, amended Exhibit B to this Order shall become Exhibit "A" to the Unit Agreement and Unit Operating Agreement and amended Exhibit B to this Order shall be attached to and made a part of the Unit Agreement and Unit Operating Agreement.

14. All operations in and production of Unitized Substances from the Unit Area and the Unitized Formation shall be governed by the terms of this Order and the terms of the Unit Agreement and the Unit Operating Agreement.

15. Getty Oil Company is appointed as Unit Operator. All operations shall be conducted by the Unit Operator in accordance with the terms and provisions of the Unit Agreement and Unit Operating Agreement, and the selection of a successor to the Unit Operator, designated by the Board, shall be governed by terms of the Unit Agreement and Unit Operating Agreement.

16. After the effective date of unitization of the Unit Area and Unitized Formation, the Unit Operator shall commence a program of pressure maintenance operations consisting initially of gas cycling through injection wells drilled into the Unitized Formation.

17. From and after the effective date of unitization of the Unit Area and Unitized Formation, all production of Unitized Substances obtained from all wells completed in the Unitized Formation in the Unit Area, and not required in the conduct of Unit Operations or unavoidably lost, shall be allocated among the various tracts or interests derived from or associated with tracts in the Unit Area in accordance with the participation formula. Said allocation of production in accordance with the tract participations (as to be shown on amended Exhibit B) using the participation formula is based upon the relative contribution which each tract or interest is expected to make during the course of Unit Operations to the total production of the Unitized Substances so allocated, pursuant to and as provided for by the terms and provisions of the Unit Agreement, including, but not limited to, Articles 5 and 6 thereof. If any of the Oil and Gas Rights in any tract is now or hereafter becomes divided and owned in severalty as to different parts of the tract, the owners of the divided interest, in the absence of an agreement providing for a different division, shall share in the Unitiz-

ed substances allocated to such a tract or interest or in the proceeds thereof, in the proportion that the surface acreage of their respective parts of such tract bears to the surface acreage of the entire tract. The portion of unit production so allocated to each separately owned tract or interest therein within the Unit Area shall be deemed, for all purposes, to have been actually produced from such tract, and operations with respect to the Unitized Formation within the Unit Area shall be deemed, for all purposes, to be the conduct of operations for the production of Unitized Substances from and on each separately owned tract in the Unit Area.

18. From and after the effective date of unitization of the Unit Area and Unitized Formation, an adjustment shall be made among the owners of the Unit Area (not including royalty or overriding royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment and other things and services of value attributable to unit operations and the amount to be charged to unit operations for any such item shall be determined by the owners of the Unit Area (not including royalty or overriding royalty owners); provided, however, if said owners of the said Unit Area are unable to agree upon the amount of such charges, or to agree upon the correctness thereof, this Board shall determine them after due notice and hearing upon application of any interested party and the net amount charged against the owner of a separately owned tract or interest shall be considered expense of the Unit Operations chargeable against such tract or interest.

19. From and after the effective date of unitization of the Unit Area and Unitized Formation, the cost and expenses of unit operations, including investment, past and prospective, shall be charged to the separately owned tracts or interests in the same proportions that such tracts or interests share in unit production, and said costs and expenses shall be borne and/or paid by the Working Interest Owners (as defined in the Unit Agreement) as provided for in Article 11 of the Unit Operating Agree-

ment. In the event the Unit Operating Agreement or other agreement entered into by the owners of the Unit Area (not including royalty owners) provides for a different method of allocating costs and expenses for unit operations, then as to such parties signatory to such agreement, the provisions of such agreement shall govern and apply.

20. From and after the effective date of unitization of the Unit Area and Unitized Formation, when the full amount of any charge made against a separately owned tract or interest is not paid when due by the person or persons primarily responsible therefor, as provided in Section 9-17-83(5) *Code of Alabama* (1975), then seven-eights (7/8) of the Unitized Substances allocated to such separately owned tract or interest may be appropriated by the Unit Operator and marketed and sold for the payment of such charge, together with interest at the rate of five percent (5%) per annum thereon. A one-eighth (1/8) part of the unit production allocated to each separately owned tract or interest shall in all events be regarded as royalty to be distributed to and among or the proceeds thereof paid to the royalty owners, free and clear of all unit expense and free and clear of any lien therefor. The owners of any overriding royalty, oil and gas payment, royalty in excess of one-eighth (1/8) of production, or other interest, who are not primarily responsible therefor shall, to the extent of such payment or deduction from his share be subrogated to all of the rights of the Unit Operator with respect to the interest or interests primarily responsible for such payment. Any surplus received by the operator from any such sale of production shall be credited to the person or persons from whom it was deducted in the proportion of their respective interests. The Unit Operator shall have such other rights provided in Article 11 of the Unit Operating Agreement.

21. That the Special Field Rules heretofore promulgated by this Board, as amended to include unit operations in the Hatter's Pond Unit (attached hereto as Exhibit D), are hereby approved and made a part of this Order and shall become effec-

tive on the date upon which unit operations, the Unit Agreement and Unit Operating Agreement become effective.

22. From and after the effective date of unitization of the Unit Area and Unitized Formation, operations shall continue so long as Unitized Substances are thereafter produced in paying quantities or so long as other Unit Operations are conducted without cessation of more than 90 consecutive days unless sooner terminated by Working Interest Owners in accordance with the provisions of the Unit Agreement. A determination by the Working Interest Owners that Unitized Substances can no longer be profitably or feasibly produced from the Unit Area shall be effective to terminate the Unit Agreement as of the date that the Unit Operator files a certificate in the Probate Court of Mobile County, Alabama to the effect that said determination has been made. Upon termination of the Unit Agreement the further development and operation of the Unitized Formation as a unit shall be abandoned and Unit Operations shall cease.

23. The form of the Ratification Agreement which is attached hereto as Exhibit G is hereby approved and made a part of this Order.

24. This Order requiring unit operations shall not become effective unless and until agreements incorporating the provisions of Section 9-17-83 of the *Code of Alabama* (1975) have been signed or in writing ratified or approved by the owners of at least 75 percent in interest as costs are shared under the terms of this order and by 75 percent in interest of the royalty and overriding royalty owners in the Unit Area and the Board has made a finding to that effect in a supplemental Order. In the event the required percentage interests have not signed, ratified or approved the Order or said agreements within six months from and after the date of such Order it shall be automatically revoked.

This cause came on for hearing before a quorum of the board consisting of The Honorable Ralph W. Adams, The Honorable

Henry A. Leslie and The Honorable Gaines C. McCorquodale. The Honorable Ralph W. Adams, The Honorable Henry A. Leslie, and the Honorable Gaines C. McCorquodale were present through these hearings, Docket Nos. 4-11-841 through 4-11-846A, with the exception that the Honorable Henry A. Leslie was absent from these hearings for a brief period of time and read that portion of the record covering the period of this absence. The Honorable Ralph W. Adams, The Honorable Henry A. Leslie, and the Honorable Gaines C. McCorquodale heard the testimony of all witnesses, the arguments of Counsel, and examined the documentary evidence adduced at these proceedings, Docket Nos. 4-11-841 through 4-11-846A. Further, The Honorable Ralph W. Adams and the Honorable Henry A. Leslie have read the record in Docket No. 8-19-821.

ORDERED this 9th day of October, 1984.

STATE OIL AND BAS BOARD OF ALABAMA

By /s/ Dr. Ralph Adams, Chairman

By /s/ Henry A. Leslie, Member

By /s/ Gaines C. McCorquodale, Member

ATTEST:

/s/ Ernest A. Mancini, Secretary

APPENDIX D

[Civ. 5403-X — Corrected on Rehearing]

...the pore volume factor that comprises sixty percent of the formula. Anderson maintains that without an adjustment to pore volume based on the remaining recoverable reserves left in a tract, the participation formula will have no reasonable relation to each tract's expected contribution to future unitization. Anderson then advocates conducting bottom hole pressure tests for determining these remaining recoverable reserves. Anderson contends that it is "elementary" that the amount of pressure in a container is indicative of the amount of gas in it.

The Board, however, rejected this argument and found that conducting bottom hole pressure tests was both unnecessary and unwarranted. O'Dell, a Getty expert, testified that seven years of production and pressure in Hatter's Pond made additional bottom hole pressure tests useless. O'Dell, adopting a position advocated by Exxon, also testified that too much pressure variation existed for the tests to be reliable, and they would not prove the existence of separate reservoirs within the field. More importantly, the evidence indicated that this type of testing was of value only if Hatter's Pond consisted of more than one reservoir.

We have already pointed out that the Board determined Hatter's consisted of one reservoir and that such a determination was reasonable. An expert for appellees testified that the Board formula was appropriate if Hatters' were one reservoir. Thus, appellees' own expert supports the Board's refusal to make any adjustment to pore volume based on remaining recoverable reserves.

Based on the evidence and the guiding standard of review, we reverse the order of the circuit court and remand it for the entry of an order affirming the orders of the Oil and Gas Board.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Wright, P.J., and Holmes, J., concur.

APPENDIX E

THE STATE OF ALABAMA — JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

July 17, 1987

86-719

EX PARTE: ARDEN A. ANDERSON

PETITION FOR WRIT OF CERTIORARI

(Re: State Oil and Gas Board of Alabama v. Arden A. Anderson, et al.)

CIV 5403-X

CERTIFICATE OF JUDGMENT
WRIT DENIED

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari be denied.

MADDOX, J. — TORBERT, CJ., ALMON, HOUSTON AND STEAGALL, JJ. CONCUR.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 17th day of July, 1987.

/s/ Robert G. Esdale
Clerk, Supreme Court of Alabama

No. 87-577

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

ARDEN A. ANDERSON, *et al.*,
Petitioners,

vs.

THE STATE OIL AND GAS BOARD OF ALABAMA, *et al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Did the Court of Civil Appeals of Alabama correctly affirm the orders of the State Oil and Gas Board of Alabama, when the Court of Civil Appeals held that the Board provided petitioners with constitutional due process with respect to pretrial discovery?

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COUNTER-STATEMENT OF THE CASE

Petitioners' Statement of the Case contains many important omissions and inaccuracies that must be corrected to give a complete Statement of the Case.

For the general background in this case, we incorporate by reference the facts set out in the decision of the Court of Civil Appeals of Alabama. *State Oil and Gas Board of Alabama v. Anderson*, 510 So. 2d 250 (Ala. Civ. App. 1987) (Appendix A to petition for certiorari, pages A-1 to A-13).

The Court of Civil Appeals of Alabama reversed the Circuit Court of Mobile County on January 14, 1987, and affirmed the orders of the State Oil and Gas Board (hereinafter referred to as "the Board") unitizing the Hatter's Pond Field in Mobile County, Alabama. The Court of Civil Appeals remanded the case to the Circuit Court with instructions to enter an order affirming the orders of the Board. The Court of Civil Appeals denied applications for rehearing. The Alabama Supreme Court denied petitions for writ of certiorari.

In their Statement of the Case, petitioners totally ignore the commencement of the case, crucial early hearings, and the first order of the State Oil and Gas Board addressing the unitization of the Hatter's Pond Field. The proceedings were commenced on May 31, 1982, when Getty Oil Company (hereinafter referred to as "Getty") filed a petition requesting the unitization of a portion of the Hatter's Pond Field, a gas condensate reservoir covering approximately 14 square miles, so that enhanced recovery operations

could be implemented for wells in the proposed unit area. (R. 100001).[1]

At the initial hearing on the Getty petition, the Board continued the proceedings and required that all mineral interest owners within the field limits be notified of the hearings, although their lands did not lie within the proposed unit area. (R. 200053).

Thereafter, the Board conducted over 13 days of hearings before it issued Order No. 83-170. The most controversial issue during the hearings was the allocation formula to be used for distributing revenues derived from unit production. Petitioners and other parties participated in this "first" set of hearings. In their Statement of the Case, petitioners ignore the fact that they actively participated in these "first" hearings and that they failed to file any discovery requests. During these "first" hearings petitioners took the position that the Board should reject the allocation formula proposed by Getty, a formula based 100% upon pore volume. Petitioners suggested the Board adopt a formula that included

[1]Initially oil and gas wells are drilled and produced under primary operations, that is, from natural energy in the reservoir. After wells in the reservoir have produced under primary operations for a length of time, they will cease to produce at a commercial rate unless enhanced recovery operations, or pressure maintenance operations, are initiated. Approval of the unit operations or unitization in accordance with the oil and gas conservation statutes, is a prerequisite for initiating enhanced recovery operations. *Ala. Code* § 9-17-80 et seq. (1975); H. WILLIAMS & C. MEYERS, MANUAL OF OIL AND GAS TERMS 569 (5th ed. 1981).

"R." represents the record of the State Oil and Gas Board.

well production or "productivity" as a factor in the formula. At no time during the "first" hearings did petitioners make any requests for discovery or any requests for subpoenas to be issued for purposes of discovery. Neither petitioners nor any other party made any objections relating to discovery. In fact, at the conclusion of the hearings, petitioners submitted a brief to the Board that included the following statement:

> The Board's authority in issuing an order relating to the matter of the unitization of the Hatters Pond Field is not limited to the simple approval or disapproval of the Getty proposal. The Board's authority in fashioning an order is broad enough to permit it to "take such action with regard to the subject matter thereof as it may deem appropriate," see Section 9-17-7(f). The subject matter in question is the unitization of the Hatters Pond Field. . . . The Board should neither take the easy way out by simply approving the Getty proposal or simply denying it and letting the matter languish. The Board must afford the direction indicated by these hearings and the order it presently enters. (R. 101715).

Thus, at the conclusion of the "first" hearings during which the allocation formula was at issue, petitioners asserted that the Board had sufficient authority and evidence before it to exercise its jurisdiction and issue a ruling in the matter. On July 29, 1983, the Board did exercise its jurisdiction and authority, issuing Order No. 83-170. In its petition for certiorari,

petitioners ignore these prior hearings in which they participated without filing any discovery requests and which resulted in an order by the Board resolving most of the issues raised. In Order No. 83-170, the Board rejected the allocation formula proposed by Getty, and the Board approved for the Hatter's Pond Unit an allocation formula based 60% on pore volume and 40% on productivity defined as a tract's average daily production as determined from a well's best month of production on the tract. (R. 100750).

On February 10, 1984, Getty filed a petition requesting the Hatter's Pond Field to be unitized in accordance with Order No. 83-170. Although petitioners had made no requests for discovery during the "first" hearings, they made various discovery requests during the "second" hearings. Getty provided the parties with vast and extensive production of documents and data. The very few requests that were denied were filed with the Board after the commencement of the hearings. (R. 101420). Despite the untimeliness of the discovery requests, the only information that was not provided to petitioners was core studies, seismic data and economic evaluations concerning certain wells.

A number of issues were raised by various parties in these "second" hearings. Anderson, et al., raised the issue during these "second" hearings that certain wells and tracts in the Hatter's Pond Unit were not in pressure communication with other wells and tracts in the Unit. Although numerous fieldwide bottom hole pressure surveys had been conducted on wells in the Hatter's Pond Unit prior to the unitization

hearings, Anderson, et al., petitioned the Board to order additional fieldwide bottom hole pressure surveys in order to determine the nature of communication in the field.

The Board conducted 10 days of hearings and, on October 9, 1984, the Board issued Order No. 84-382 granting Getty's Petition.

Concerning the issue raised by petitioners, the Board found, based upon overwhelming geologic and engineering evidence, that all tracts included in the Hatter's Pond Unit are underlain by a single fieldwide reservoir having communication among all wells and tracts and that all tracts in the Unit will benefit from secondary recovery (petition for certiorari, pages A-51, A-65). Further, the Board denied the petition by Anderson, et al., for additional bottom hole surveys because the evidence presented clearly showed that bottom hole pressure surveys were inaccurate and unreliable for use in the Hatter's Pond Unit and, therefore, would be wasteful and would serve no useful purpose. (*Id.* at pages A-53, A-54, R. 101444).

On February 7, 1985, Getty filed a petition requesting that the Board enter an order finding that Getty had obtained 75% approval of the plan of unitization as required by the Alabama oil and gas conservation statutes. A hearing was held on this petition on March 29, 1985, and on April 9, 1985, the Board issued Order No. 85-63 finding that the plan of unitization set forth in Order No. 84-382 had been ratified by the 75% as required by statute, and directed that unit operations in accordance with

Order No. 84-382 be commenced on May 1, 1985. (R. 101835).

During all these hearings, the Board acted in accordance with its duty to protect all parties' constitutional rights of due process. The Board called prehearing conferences prior to the commencement of hearings at which parties presented their positions and made exhibits available to other parties. The Board required all exhibits to be prefiled. The Board allowed all interested parties to participate in the hearings in any manner they wished.

There is a vast amount of information and data available at the Board's offices for public review in preparing for hearings. For example, well logs, cores or core chips, core analyses, cuttings, production reports, production tests, pressure tests, and other records are available for public review. The information constitutes the essential data base and was available for all parties and their experts to review and analyze in order to prepare for the hearings.

REASONS FOR DENYING THE WRIT

I. There is no substantial federal question arising under the United States Constitution raised in the petition for writ of certiorari.

The federal question raised by petitioners whether the Board provided procedural due process to the parties is utterly insubstantial. Petitioner contends "this case presents an opportunity for the U. S.

Supreme Court to define the due process rights of administrative litigants in the areas of prehearing discovery and the compulsion of production." (petition for certiorari, page 13). This is an enormous overstatement of the significance of this case. Neither the Board nor the Court of Civil Appeals of Alabama ever held there was no right to discovery. In fact in its orders, the Board expressly stated:

> [A]lthough there are no formal discovery procedures set out in the regulations of the Board, the policy of the Board is to provide all parties before it with a full and fair hearing. The policy of the Board is not to deny reasonable requests for discovery; however . . . the discovery requests of [petitioners] are unreasonable, untimely, will result in waste, and will not protect the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit." (petition for certiorari, page A-72).

Virtually all discovery requests filed by petitioner during the Board hearings were produced. In denying the few discovery requests that were not produced, the Board clearly acted within its discretion, and on appeal the Court of Civil Appeals affirmed the Board's orders. In this case, the administrative agency (Board) did not deny that there was a constitutional right to discovery, and the agency (Board) did not deny the right to prepare adequately for administrative hearings. The agency (Board) simply held that certain few requests for discovery

were due to be denied under the relevant circumstances.

This case, in which the administrative agency (Board) so clearly acted to protect the parties' rights of procedural due process, is not a case in which the United States Supreme Court should grant certiorari and address the question of discovery.

By granting certiorari in this case the United States Supreme Court would simply be reviewing the same facts before the Board, which were subsequently reviewed by the Court of Civil Appeals, to determine under those specific facts and circumstances whether the Board violated petitioners' rights of procedural due process. In the decision below, the Court of Civil Appeals of Alabama reviewed a record containing over 20,000 pages, studied lengthy briefs, heard oral argument on all issues, and prepared a comprehensive and thorough decision in which it held there to be no procedural due process violation. The United States Supreme Court has stated that it will not exercise jurisdiction to decide a question which turns solely upon an analysis of the particular facts. *E.g., United States v. Johnston*, 268 U.S. 220 (1925). As the United States Supreme Court stated in *Berenyi v. Immigration Service*, 385 U.S. 630, 636 (1967): "This Court possesses no empirical expertise to set against the careful and reasonable conclusions of lower courts on purely factual issues." This principle is particularly applicable to this case. The decision whether the Board acted correctly in denying certain discovery requests turns on the particular facts in the case. The Court of Civil Appeals of Alabama has

scrutinized the facts in detail and determined there to be no due process violations; the United States Supreme Court should not grant certiorari to review those same facts.

This Court has stated that certiorari is due to be denied when "the question [is] of importance merely to the litigants and [does] not present an issue of immediate public significance." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 79 (1955). A decision by the United States Supreme Court would be limited to the facts in this case; the case simply does not present the basis for a far-reaching, momentous decision of general public significance by the United States Supreme Court.

In this case where the orders of the Board and the decision of the Court of Civil Appeals indicate a thorough knowledge and understanding of the facts and issues, the United States Supreme Court should defer to the state with respect to the state administrative agency, the administrative experts, and the state's appellate court system.

II. The Court of Civil Appeals of Alabama correctly affirmed the orders of the State Oil and Gas Board of Alabama when the Court of Civil Appeals held that the Board provided petitioners with constitutional due process with respect to pretrial discovery.

There was voluminous discovery during the hearings before the Board, and petitioners received virtually everything they requested. The few items

requested and not ordered produced were requested after the "second" hearings had commenced. Despite the untimeliness of the discovery requests, the only information Getty did not make available was core studies, seismic data and economic evaluations concerning certain wells.

In their petition for certiorari, petitioners purport to state the circumstances of their discovery requests, but they rather conveniently ignore certain facts of which the Court of Civil Appeals was cognizant when it affirmed the orders of the Board. In denying the very few items not produced, the Board was cognizant of the following facts: (1) the untimeliness of the requests, that is, the requests were made to the Board *after* the commencement of the "second" set of hearings, with some of the requests being filed months after the hearings began; (2) the determination that the information requested was not necessary to determine the issue before the Board; (3) the cumulative nature of the requests; (4) the need for unit operations to commence as soon as possible in order to prevent loss of valuable natural resources of Alabama; (5) the Board's statutory duty to prevent waste and to protect correlative rights;[2] (6) the fact that the Board provides a vast amount of material that is available as a public record to all parties to

[2]Section 9-17-2 of the *Code of Alabama* (1975) provides as follows: "The prevention of waste of oil and gas and the protection of correlative rights are declared to be in the public interest. The purpose of [the Alabama oil and gas conservation statutes] is to prevent such waste and to protect correlative rights."

review; for example, cores, core analyses, well logs and production reports; (7) the admission by petitioners' own geologic witness that he failed to study much of the pertinent information that was available as a public record; (8) the knowledge of the Board's staff of experts that seismic data requested had no usefulness in this particular case and that seismic data are customarily treated in the industry as proprietary and confidential; and (9) the prehearing conferences and prefiling of exhibits, which allowed all parties the opportunity to be adequately prepared for the hearings. The Court of Civil Appeals was undoubtedly aware of all these facts and circumstances when it affirmed the orders of the Board.

Petitioners and other parties in the hearings relating to the unitization of Hatter's Pond Field clearly received that information and discovery to which they would have been entitled in the trial courts of Alabama.

There is a well-established judicial principle governing pretrial discovery: the administrative agency or the trial court has administrative or judicial discretion to determine whether a discovery request is proper, and the agency or court is reversed only for abuse of discretion. *E.g., Harden v. Adams*, 760 F. 2d 1158 (11th Cir. 1985), *cert. denied*, 474 U.S. 1007 (1985). In its review of the orders of the Board, the Court of Civil Appeals of Alabama held that " 'the denial of prehearing discovery [in an administrative proceeding] *as applied* in a particular case' could result in a due process violation. Thus, we must

examine whether the Board's denial of [petitioners'] discovery requests did in fact result in a denial of procedural due process. . . . We have examined the record and are satisfied that it did not." *State Oil and Gas Board of Alabama v. Anderson*, 510 So. 2d 250, 256, (Ala. Civ. App. 1987). In its decision, the Court of Civil Appeals of Alabama reviewed the specific facts relating to the discovery requests and affirmed the orders of the Board.

With respect to procedures used in administrative hearings, the United States Supreme Court has held that "the requirements imposed by the guaranty [of due process of law] are not technical, nor is any particular form or procedure necessary." *Inland Empire Council v. Millis*, 325 U.S. 697, 710 (1956).

This Court has held that a person attacking an order of an administrative agency "carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences." *FPC v. Hope Gas Co.*, 320 U.S. 591, 602 (1944). The Court of Civil Appeals affirmed that the Board's orders were just, fair and reasonable and protected the procedural due process of the parties.

The decision of the Board providing for the unitization of the Hatter's Pond Field was ultimately approved and ratified by over 97% of the working interest owners and by over 75% of the royalty interest owners in the Unit. The Hatter's Pond Field Unit was established and enhanced recovery operations commenced thereby preventing waste of hydrocarbon resources and protecting correlative rights of all mineral interest owners.

In their petition, Anderson, et al., intimate that the decision of the Court of Civil Appeals of Alabama is erroneous because petitioners' substantive due process rights have been violated. We note that the early oil and gas conservation statutes adopted by oil and gas producing states and orders issued pursuant to those statutes were frequently challenged as allowing the unconstitutional deprivation of property without due process. The United States Supreme Court and numerous state appellate courts have rejected these arguments and have upheld such oil and gas conservation statutes and orders as a valid exercise of the state's police power. *E.g., Hunter Co. v. McHugh*, 320 U.S. 222 (1943); *Bandini Co. v. Superior Court*, 284 U.S. 8 (1931); *Patterson v. Stanolind Oil and Gas*, 77 P. 2d 83 (Okla. 1938).

Summarizing a number of its decisions on this subject, the United States Supreme Court has stated:

> We have held that a state has constitutional power to regulate production of oil and gas so as to prevent waste and to secure equitable apportionment among landowners of the migratory gas and oil underlying their land, fairly distributing among them the costs of production and of the apportionment.

Hunter Co. v. McHugh, 320 U.S. 222, 227 (1943).

Simply stated, the principal reason for denying the petition for writ of certiorari is that the State Oil and Gas Board of Alabama and the Court of Civil Appeals of Alabama were just, fair and correct in their orders.

The orders of the State Oil and Gas Board providing for the unitization of the Hatter's Pond Field protect procedural due process and substantive due process rights under the United States Constitution. The decision of the Court of Civil Appeals of Alabama affirming the orders of the Board unitizing the Hatter's Pond Field is due the deference accorded it.

CONCLUSION

For the reasons stated, the petition for writ of certiorari is due to be denied.

Respectfully submitted,

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(3)

NO. 87-577

In the Supreme Court of the United States

OCTOBER TERM, 1987

ARDEN A. ANDERSON, ET AL.,
Petitioners

vs.

STATE OIL AND GAS BOARD
OF ALABAMA, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF ALABAMA

BRIEF IN OPPOSITION BY RESPONDENT GETTY OIL COMPANY

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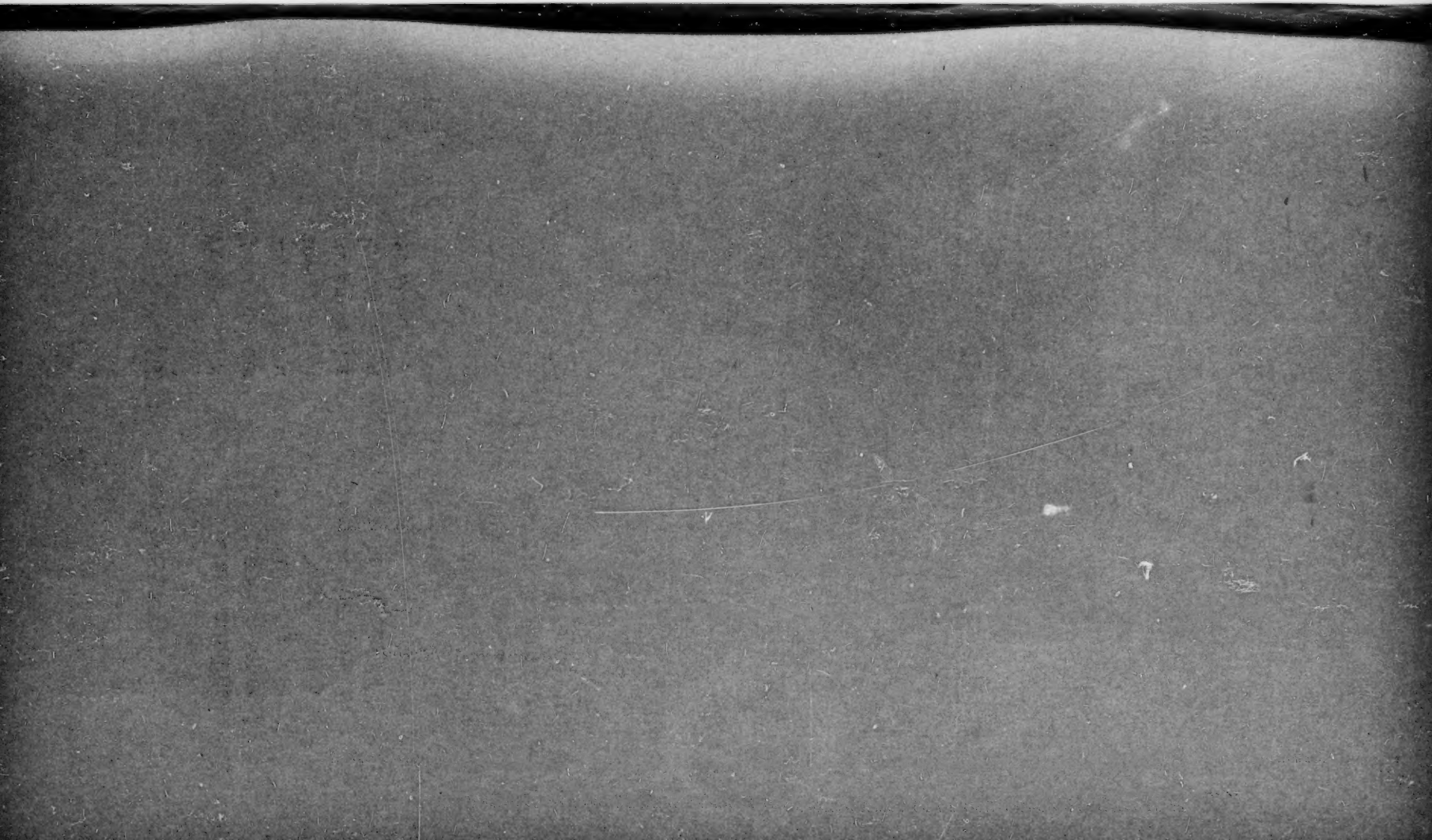

QUESTIONS PRESENTED

1. Whether a decision by a state administrative agency to deny discovery requests found to be cumulative, unnecessary, costly, dangerous, untimely, and directed toward confidential and proprietary information violates the Due Process Clause or rests within the agency's sound discretion?

2. Whether an appellate court, which has reviewed the record and concluded that no violation of the Due Process Clause has occurred, may support its decision on the merits by reference to the harmless error rule?

LIST OF AFFILIATES AND SUBSIDIARIES OF GETTY OIL COMPANY

Getty Oil Company is a wholly owned subsidiary of Texaco Inc. The affiliates and subsidiaries of Texaco Inc. listed in its most recent Form 10-K filed with the Securities and Exchange Commission are as follows:

Getty Oil Company
Getty Pipeline, Inc.
Riverway Gas Pipeline Company
Texaco Oils Inc.
Texaco Producing Inc.
Texaco Refining and Marketing Inc.
Texaco Trading and Transportation Inc.
The Texas Pipe Line Company
Deutsche Texaco AG
Norsk Texaco Oil A/S
S. A. Texaco Belgium N.V.
S. A. Texaco Petroleum N.V.
Texaco A/S
Texaco Britain Limited
Texaco Denmark Inc.
Texaco Investments (Netherlands), Inc.
Texaco (Ireland) Limited
Texaco Limited
Texaco North Sea U. K. Company
Texaco Oil Aktiebolag
Texaco Petroleum Maatschappij (Nederland) B.V.
Refineria Panama S. A.
Refineria Texaco de Honduras, S.A.
Texaco Brasil S.A. - Productos de Petroleo
Texaco Caribbean Inc.
Texaco Nigeria Limited
Texaco Panama Inc.
Texaco Petroleum Company
Texaco Trinidad, Inc.
Texas Petroleum Company
Texaco Butadiene Company
Texaco Chemical Company
Canadian Reserve Oil and Gas Ltd.
Texaco Canada Inc.
Texaco Canada Resources Ltd.
Getty Marine Corporation
Texaco International Trader Inc.
Texaco Overseas Holdings Inc.
Texaco Overseas Petroleum Company
Texaco Overseas Tankship Ltd.

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TABLE OF AUTHORITIES (continued)

Respondent Getty Oil Company respectfully requests that this Court deny the Petition for Writ of Certiorari that seeks a review of the opinion rendered by the Court of Civil Appeals of Alabama in this matter. That opinion is reported at *State Oil and Gas Board of Alabama v. Anderson*, 510 So. 2d 250 (Ala. Civ. App. 1987).

STATEMENT OF THE CASE

Although the Statement of the Case contained in the Petition for Writ of Certiorari is accurate as to the facts stated, the omission of numerous relevant facts renders it seriously misleading. Petitioners essentially ignore almost two years of administrative proceedings before the State Oil and Gas Board of Alabama (the "Board") and the extensive discovery that occurred throughout those proceedings.

The unitization proceedings which are at issue in this case began on May 31, 1982 (not February 10, 1984, as indicated by Petitioners), when Getty Oil Company ("Getty") filed its initial unitization petition with the Board. This petition for unitization was filed because evidence disclosed that pressure was declining in the Hatter's Pond Field and that, without unitized operations, millions of dollars worth of hydrocarbons would be irretrievably lost. (BR100001.)[1] Thirteen days of hearings were eventually held on the original petition (the "First Hearings"). These hearings featured an intense debate by the parties (including Petitioners) concerning several issues, including what property should be included in the Unit and the proper allocation formula by which total production from the Unit would be allocated to the individual tracts in the Unit. Petitioners were actively involved in these First Hearings.

Discovery began in the First Hearings on June 24, 1982, with a request for production of documents.

[1] The six-digit numbers preceded by "BR" are citations to pages from the Board record in this matter.

(BR100221.) Thereafter, numerous discovery requests were made by several different parties, and Getty voluntarily produced literally thousands of pages of documents. Although Petitioners were actively involved in the First Hearings, they filed no requests for discovery despite the fact that the law firm representing them filed several discovery requests on behalf of other parties whose interests wewe aligned with those of Petitioners. In addition, as required by law, Getty had filed thousands of pages of documents with the Board for the wells that Getty operated, all of which were available to the public. (BR407118-9958.) The documents produced by Getty included *all* the raw data available for each of the wells Getty operated. (*Id.*) No party ever objected to a failure by Getty to comply fully with all discovery requests during the First Hearings.

On July 29, 1983, the Board issued Order No. 83-170, a copy of which is not included in Petitioners' Appendix but is appended hereto as Appendix A.[2] This order resolved most of the issues involved, including the proper allocation formula for the Unit; directed that a technical committee be formed for the purpose of studying and remapping a certain portion of the Field; and directed Getty to submit a new petition incorporating the terms of the order and the committee's findings.

The committee (the "Technical Committee") formed pursuant to Board Order No. 83-170 was composed of experts representing hundreds of owners in the field (including Petitioners). Following the conclusion of the committee's deliberations and as required by Order No. 83-170, Getty filed a second petition concerning unitization in February 1984. (BR100786.) The second petition incor-

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2 A copy of Order No. 83-170 was attached to and specifically made a part of Order No. 84-382, which is included in Petitioners' Appendix (pp. A-31 to A-81). However, neither Order No. 83-170 nor any of the other exhibits to Order No. 84-382 were included in Petitioners' Appendix.

porated the findings of Order No. 83-170 and of the Technical Committee and initiated a second set of hearings spanning a period of more than five months (the "Second Hearings"). At the time the second petition was filed, it was contemplated that the only issues that would continue to be litigated were those left unresolved by Order No. 83-170. Instead, Petitioners and others filed separate petitions with the Board in an effort to change or alter the formula and other provisions of Order No. 83-170 and insisted on a relitigation of all these issues, even though the evidence revealed that continued delays in implementing unitization were causing an irretrievable loss of approximately $250,000.00 worth of hydrocarbons per day due to the decline in reservoir pressure. (BR100742, 200251, 203551-552, and 206916.)

Discovery during the Second Hearings began with Petitioners' first request filed on March 20, 1984, only ten days prior to the scheduled prehearing conference. (BR100928.) Several supplemental discovery requests were filed prior to the April 11, 1984 hearing. (BR100928 and 100943.) At the April 11 hearing, the Board indicated that it would take these requests and other matters under advisement, but counsel for Petitioners insisted on an immediate ruling. Thus, because Petitioners' discovery requests related to issues that had already been litigated and decided in the First Hearings, the Board denied Petitioners' requests. (BR101013.) Petitioners then filed a petition for mandamus with the Circuit Court of Tuscaloosa County, and a decree was issued, with the Board's consent, allowing Petitioners to relitigate certain issues. (BR101022.) Thereafter, the Board reheard arguments concerning discovery and other matters that had been previously litigated.

Petitioners' discovery requests during the Second Hearings included requests for additional bottom hole

pressure tests,[3] oral depositions, and production of documents. At the time Petitioners filed their request for additional bottom hole pressure tests, there were already more than 100 such tests in evidence covering a period of seven years. (BR205902-903.) Petitioners' request would have added only 13 additional tests. Evidence showed (and Petitioners' experts admitted) that these tests would cost between $12,000.00 and $30,000.00 per well and that there was a substantial risk that such tests could damage one or more wells to the point that workovers or new wells would be required at enormous expense—possibly as much as $8,000,000.00 per well. (BR205927-932.) Furthermore, a subcommittee of the Technical Committee, which had been formed pursuant to Order No. 83-170 and which represented all parties to the proceedings, voted seven to one, with one abstention, not to require additional bottom hole pressure tests. (BR302711-714.) Finally, there was expert testimony that these tests would provide no useful information. (BR205903; *see* BR204705-707.) In light of these factors and because the tests were only relevant, if at all, to issues that had already been resolved, the Board refused to require these additional tests. (See pages A-51 through A-54 of Petitioners' Appendix for text of Board Order on this issue.)

Regarding Petitioners' request for oral depositions, Getty voluntarily complied by making three witnesses available. (BR101097.) Consequently, there was no need for the Board to order depositions to be taken.

With respect to the discovery of documents, Getty voluntarily produced virtually all of the documents requested by Petitioners and by other parties during the Second Hearings even though most of these documents

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[3] A bottom hole pressure test measures certain pressures in a well bore and can be useful for determining various engineering facts concerning the well, such as the remaining expected life of the well.

related solely to issues that had already been litigated and resolved. As noted above, the documents produced by Getty included *all* of the raw data available for *all* wells operated by Getty. Getty refused to produce only a limited number of documents containing proprietary interpretations of this raw data. The documents that were not produced fell into the following groups: seismic data, written studies of core samples, and internal economic evaluations. Petitioners' own representative on the Technical Committee agreed with the Committee's decision that seismic data could not accurately be used in the Hatter's Pond Field. (BR302548-549.) Although all of the raw data needed for Petitioners to prepare their own core studies and economic evaluations were available, Petitioners' expert witness acknowledged that he had not even bothered to review this raw data. (BR204635 and 204677.) Finally, Getty offered testimony explaining that the documents it had not produced contained sensitive, confidential, and proprietary information which, if produced, would have been prejudicial to Getty's other business interests in the general area. (BR205860-861.)

The ultimate findings of the Board on Petitioners' discovery requests were summarized by the Board in Order No. 84-382 (pages A-51 through A-54 and A-67 through A-72 of Petitioners' Appendix). The most pertinent portion of these findings reads as follows:

> 64. That the Board has been provided with ample information and sufficient data to make a decision on the Petitions presently before it.
>
> 65. That voluminous amounts of information and data have been produced during these hearings (Docket Nos. 4-11-841 through 4-11-846A) and the previous hearings (Docket No. 8-19-821), and all parties involved in all of these proceedings have been afforded an opportunity to examine all pertinent information and data relating to the

unitization of the Hatter's Pond Field. Furthermore, all parties have had full opportunity to prepare and present their cases to the Board. The information that Getty Oil Company refused to provide those parties is not necessary to determine the issues presented before the Board.

66. That the discovery requests filed by Arden A. Anderson, Dominex, Inc., et al., Hatters Alabama Company and Leboc Mobile Company, and AMAX Petroleum Corporation were not filed in a timely manner and the granting of those requests would unduly delay the unitization of the Hatter's Pond Field.

67. That, although there are no formal discovery procedures set out in the regulations of the Board, the policy of the Board is to provide all parties before it with a full and fair hearing. *The policy of the Board is not to deny reasonable requests for discovery;* however, to the extent not already complied with, the discovery requests of Arden A. Anderson, Dominex, Inc., et al., Hatters Alabama Company and Leboc Mobile Company, and AMAX Petroleum Corporation are unreasonable, untimely, will result in waste, and will not protect the coequal and correlative rights of all the mineral interest owners in the proposed Hatter's Pond Field Unit.

(BR101462-463.) (Emphasis added.) It should be noted that prior to making these findings, the Board had heard not only the testimony in these proceedings relating to discovery but had also heard extensive technical evidence in these proceedings and in more than 60 previous hearings relating to the Hatter's Pond Field. (BR400248-822.)

Order No. 84-382 not only resolved the above-discussed discovery issues but also reaffirmed the Board's findings with respect to the issues decided by Order No. 83-170, resolved the issues that were not decided by Order

No. 83-170, and ordered unitization to commence upon the approval of 75% in interest of the owners in the Unit. On April 9, 1985, the Board issued Order No. 85-63, in which it found that the Unit had been approved by the requisite 75% in interest. In fact, more than 90% in interest of the working interest owners and more than 75% in interest of the royalty owners signed written ratifications approving the Unit. (BR101839-841.) Furthermore, despite the fact that Exxon Corporation (the operator and largest single working interest owner of the tract in which all but one of the Petitioners own their interest) did not ratify the Unit prior to the issuance of Order No. 85-63, it has since filed briefs in the appellate proceedings and made oral arguments in favor of the Board's orders.

SUMMARY OF ARGUMENT

Petitioners attempt to turn a proper exercise of discretion by the Board into a constitutional issue. By their incomplete statement of the case, Petitioners insinuate that there was practically no discovery in this matter and that their property was "condemned" without due process. On the contrary, there was voluminous discovery both during the First Hearings, which Petitioners have attempted to ignore, as well as during the Second Hearings. Getty only refused to produce a few documents out of the thousands of documents that were requested. The Board did not order production of these few documents because the Board found, after hearing testimony concerning the nature of the documents, that they were cumulative, were unnecessary for determination of the issues before the Board, were requested in an untimely fashion, and contained or revealed proprietary and confidential material concerning Getty's interests in other areas.

Federal law on this question is well decided. There is no blanket constitutional right to discovery in an ad-

ministrative context, although due process violations can occur by the denial of discovery under particular factual circumstances. Petitioners want to involve this Court in the tedious factual determination of whether, in light of the 20,000-page record and voluminous discovery that occurred, the Alabama Court of Civil Appeals erred when it affirmed a discretionary decision by the Board not to require production of a few proprietary documents. There is simply no reason to involve this Court in resolving factual disputes that have already been litigated twice before a state administrative agency and upheld by the Alabama appellate courts. To achieve the result Petitioners desire, this Court would have to hold that state administrative agencies do not have discretionary power to deny discovery requests. Even if this Court were inclined to adopt such a rule of law, the facts of this case provide a poor background to do so.

ARGUMENT

A. *Introduction*

This case is in reality nothing more than a factual dispute. Petitioners have from the beginning of these proceedings objected primarily to the formula that determines what percentage of total production is to be allocated to each tract in the Hatter's Pond Unit. Basically, Petitioners want more money than the Board found they were entitled to receive, and they are attempting to use this Court as a vehicle to get it. They have contended for five years now that the Hatter's Pond Field consists of several separate reservoirs rather than one reservoir. The Board concluded, however, after considering technical evidence and expert testimony, that there was only one heterogeneous reservoir in the Field. This conclusion was ultimately upheld by the Alabama Court of Civil Appeals, and the Supreme Court of Alabama was not persuaded to grant a writ of certiorari.

Now Petitioners come before this Court in what amounts to a final effort to relitigate their multiple reservoir claim. This time, Petitioners are attempting to create a constitutional issue out of the dispute over the few proprietary documents that were not produced by Getty. Despite their efforts to constitutionalize discovery, when the complete facts of this case are considered it becomes apparent that the only issue Petitioners can raise is whether the Board abused its broad discretion in discovery matters.

B. *The Only Discovery Issue Involves a Question of Discretion and not a Question of Constitutional Law*

There is no question of law here for this Court to resolve. It has been well established by the federal courts that there is no blanket constitutional right to discovery in administrative matters. *See, e.g., Silverman v. Commodity Futures Trading Commission*, 549 F.2d 28, 33 (7th Cir. 1977); *N.L.R.B. v. Interboro Contractors, Inc.*, 432 F.2d 854 (2d Cir. 1970), *cert. denied*, 402 U.S. 915 (1971); *Waco Financial, Inc. v. National Association of Securities Dealers, Inc.*, 513 F. Supp. 758, 761 (W.D. Mich. 1981). This Court has addressed this issue in the criminal context in *Weatherford v. Bursey*, 429 U.S. 545 (1977), where it stated: "There is no general constitutional right to discovery in a criminal case." *Id.* at 559. Similarly, this Court has stated that "the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded." *Id.* (quoting *Wardius v. Oregon*, 412 U.S. 470, 474 (1973)).

Petitioners attempt to demonstrate a supposed conflict among the circuits on this question by ignoring that, even without a blanket constitutional right to discovery, the denial of discovery *under particular factual circumstances* could result in a denial of due process. Petitioners do this by arguing that *Silverman* stands for the

proposition that there is no constitutional right to any discovery in an administrative proceeding and that *Silverman* conflicts with other cases that recognize that a due process violation could occur under certain circumstances as a result of the denial of discovery. However, the *Silverman* court, after stating that there was no basic constitutional right to pretrial discovery in administrative proceedings, noted that the Due Process Clause does protect the parties' rights by providing for fundamental fairness. Then, after reviewing the facts, the *Silverman* court found that there had been no due process violation in that case. *Silverman*, 549 F.2d at 33-34. Thus, the cases cited by Petitioners are actually in complete harmony with *Silverman* as well as with *Interboro* and *Waco Financial* and reflect only an acknowledgment that, under the facts of a given case, a due process violation could occur.

This is the very rule applied by the Alabama Court of Civil Appeals in this case as demonstrated by its statement that although "there is no basic constitutional right to prehearing discovery in administrative proceedings . . . 'the denial of prehearing discovery *as applied* in a particular case' could result in a denial of procedural due process." *Anderson*, 510 So. 2d at 256 (quoting *Dawson v. Cole*, 485 So. 2d 1164, 1168 (Ala. Civ. App. 1986)). In fact, the Court of Civil Appeals stated that it had examined the record in this case and was satisfied that, based on these facts, there had been no due process violation. *Anderson*, 510 So. 2d at 256. Thus, the court's holding in the present case was not that Petitioners had no due process rights concerning discovery but that any such due process rights had not been violated.

The essence of the decisions discussed above is that an administrative agency has broad discretion concerning discovery requests, as does a trial court under the Federal Rules of Civil Procedure. Petitioners themselves have previously urged that the rule of discovery in this case

should be "subject to the guiding discretion of the agency bound by the same constraints as a Circuit Judge." (Petitioners' Brief in Support of Petition for Writ of Certiorari to the Alabama Supreme Court, pp. 32-33.) Petitioners do not disagree with the law; all they disagree with is the Court of Civil Appeals' determination that the Board's exercise of discretion in this case was proper. Granting the Petitioners' request for a writ of certiorari would simply permit a consideration by this Court of the application of well settled law to the particular facts in this case. For this reason alone, the writ of certiorari should not issue. *See Rudolph v. United States*, 370 U.S. 269 (1962); *United States v. Johnston*, 268 U.S. 220, 227 (1925).

C. *The Facts Do Not Give This Court An Opportunity to Refine The Law in This Area*

Even if this Court were of the opinion that some refinement in the law concerning discovery were needed, the facts of this case do not present a proper opportunity for the Court to do so. It must be remembered that this case involves a denial of a few out of many discovery requests—*not* a denial of discovery. As noted in the Statement of the Case, extensive discovery occurred during both the First Hearings and the Second Hearings. Petitioners were active participants in the First Hearings while discovery proceeded, but they made no discovery requests.

After the Board resolved most of the issues in Order No. 83-170 and after Getty filed the second petition regarding unitization pursuant to that order, Petitioners hired a new lawyer and started filing discovery requests. As discussed above, these requests were directed at the same issues (primarily the multiple reservoir issue) that had already been extensively litigated by the parties during the First Hearings and resolved by the Board.

The Board's decision not to require the production of a few of the numerous documents requested was obviously within its discretionary powers. The requests were clearly filed in an untimely manner, coming as they did nearly two years after the proceedings had begun. Furthermore, they were apparently interposed merely for the purpose of delay since they addressed issues that had already been decided. The denial of discovery requests that are untimely and filed for the apparent purpose of delay certainly does not violate the Due Process Clause. *E.g., Price v. H.B. Green Transportation Line, Inc.*, 287 F.2d 363 (7th Cir. 1961); *Empresa National Siderurgica, S.A. v. Glazer Steel Co.*, 503 F. Supp. 1064 (S.D.N.Y. 1980). This is particularly true in a case in which the evidence revealed that delays in implementing unitization were causing all owners in the field an irrevocable loss of $250,000.00 worth of hydrocarbons *per day*.

Even apart from the time considerations, the additional bottom hole pressure tests requested by Petitioners would have been costly, dangerous, unnecessary, and cumulative. Rule 26(b)(1) of the Federal Rules of Civil Procedure specifically permits a limitation of discovery under these circumstances. The Federal Rules also give a trial judge discretion to deny discovery requests that are merely cumulative. In fact, the Federal Rules were amended in 1983 to make it clear that federal trial courts can limit discovery when the materials sought are cumulative, a rule described as embodying the existing practice of many courts. *See* Fed. R. Civ. P. 26(b) and comments. Accordingly, there is clearly no constitutional violation in denying discovery requests that are cumulative, costly, and dangerous.

Finally, as noted above, the Board found that those few documents that were not produced contained sensitive and proprietary information that would have been damaging to Getty's other business interests to disclose. Protec-

tion for such material is clearly recognized in Fed. R. Civ. P. 26(c), and it cannot be seriously contended by Petitioners that the Federal Rules concerning discovery are unconstitutional. *See, e.g., Smith & Wesson v. United States*, 782 F.2d 1074 (1st Cir. 1986) (district court acted within its discretion in denying discovery request for documents containing confidential commercial information). *See generally* 1 C. KOCH, ADMINISTRATIVE LAW AND PRACTICE, §5.60, p. 408 (1985).

Petitioners' contention that the Board did not have discretion to deny their request for production of these documents is tantamount to a contention that the denial of any discovery request is a constitutional violation. Under such a rule, all discovery requests would have to be granted automatically, no matter how costly, how dangerous, how cumulative, or how irrelevant. Unless this Court is prepared to make such a rule, issuing the writ would only permit this Court to spend many hours reviewing thousands of pages of technical documents and expert testimony to verify that no abuse of discretion occurred in this case.

D. *Petitioners' Harmless Error Argument Is Inapposite*

Petitioners argue in their second issue that the harmless error rule applied by the Alabama Court of Civil Appeals is in conflict with the decisions of this Court. Their argument on this point is completely misdirected. The first case cited by Petitioners is *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915), a case which has utterly no relevance to the issue at hand. The issue in *Coe* was whether an execution pursuant to a judgment could be issued without giving the defendant notice and a hearing. Of course, this Court held that it could not and opined that due process was violated even if the result would have been the same after notice and hearing. This is a far cry from Petitioners' argument that due process was violated in the present case by the Board's refusal to compel discovery of certain

documents that contained sensitive and confidential information and that were found to be cumulative and unnecessary.

Petitioners also cite *N.L.R.B. v. Burns*, 207 F.2d 434 (8th Cir. 1953), and *Donnelly Garment Co. v. N.L.R.B.*, 123 F.2d 215 (8th Cir. 1941). Both these cases, however, involved the failure of an agency to admit allegedly relevant evidence at a hearing and not the failure to require discovery. Certainly, these two situations are quite different. In fact, the United States Court of Appeals for the District of Columbia Circuit made this same distinction with respect to *Burns* and *Donnelly* when it refused to find prejudicial error in an agency's refusal to issue *subpoenas ad testificandum* to four agency employees. *Great Lakes Airlines, Inc. v. Civil Aeronautics Board*, 294 F.2d 217 (D.C. Cir.), *cert. denied*, 336 U.S. 965 (1961).

The harmless error rule is embodied in a federal statute (28 U.S.C. §2111) and has been recognized by this Court. *See United States v. Lane*, 474 U.S. ____, 88 L. Ed. 2d 814 (1986); *Chapman v. California*, 386 U.S. 18 (1967). Indeed, the harmless error rule is a very well established principle of American law. However, it should be noted that the Alabama Court of Civil Appeals did not simply apply the harmless error rule. As revealed on page A-11 of Petitioners' Appendix, that court held that it was required "to examine whether the Board's denial of [Petitioners'] discovery request did *in fact* result in a denial of procedural due process. *We have examined the record and are satisfied that it did not.*" *Anderson*, 510 So. 2d at 256 (emphasis added). The court further held that, even accepting Petitioners' arguments as true, the requested discovery would have been merely cumulative, and the court pointed out that there was expert testimony that additional bottom hole pressure tests would have been useless because "too much pressure variation existed for the tests to be reliable." *Id.* at 256-257. Under these circumstances it can

hardly be said that the Alabama Court of Civil Appeals violated the Petitioners' rights under the Due Process Clause when it affirmed the Board's refusal to require additional bottom hole pressure tests and the production of a few proprietary documents.

CONCLUSION

For the reasons discussed above, the Petition for Writ of Certiorari should be summarily denied.

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APPENDIX A

BEFORE THE STATE OIL AND GAS BOARD OF ALABAMA

PURSUANT TO A DECISION RENDERED FOLLOWING SPECIAL SESSIONS OF THE STATE OIL AND GAS BOARD OF ALABAMA HELD ON AUGUST 19, 1982; NOVEMBER 8, 9, 1982; DECEMBER 13, 14, 15, 1982; FEBRUARY 21, 22, 23, 1983; May 9, 10, 11, 1983; AND JULY 1, 1983, THE FOLLOWING ORDER IS HEREBY PROMULGATED:

IN RE: ORDER NO. 83-170 Docket No. 8-19-821

This cause came on for hearing before the State Oil and Gas Board of Alabama on the petition of Getty Oil Company, for an Order approving and establishing a unit consisting of the hereinafter described "Unit Area" in the Hatter's Pond Field, Mobile County, Alabama, and requiring the operation of said Unit Area as one single unit for the production of gas, condensate, distillate, sulfur, and all associated and constituent liquid or liquefiable hydrocarbons within or produced from the Unit Area in order to effect secondary recovery operations by gas cycling and to increase the recovery of hydrocarbons under a program for the drilling of injection wells into the "Unitized Formation"(as hereinafter defined), so as to prevent waste and protect the correlative rights of interested parties, but limited to the proposed Unitized Formation, designated as the Smackover-Norphlet Gas Pool, a common source of supply of Unitized Substances underlying the hereinafter described Unit Area, which Unitized Formation is defined as that geological formation underlying the Unit Area which is the

stratigraphic equivalent of the subsurface interval between the electric log depths of 17,988 feet and 18,429 feet in the Getty Oil Company-Peter Klein 3-14 Well, Permit No. 1978, located in Section 3, Township 2 South, Range 1 West, Mobile County, Alabama, in the Hatter's Pond Field, or such other enlarged interval as may be ordered by the State Oil and Gas Board of Alabama.

Said petition further seeks an Order of the Board approving the Unit Agreement and the Unit Operating Agreement for the proposed unit and the establishment of Special Field Rules providing for unitized operations in conformity with the provisions of said Unit Agreement and said Unit Operating Agreement and the provisions of Section 9-17-1 through 9-17-32 and Section 9-17-80 through 9-17-88, *Code of Alabama* (1975). Said petition also seeks entry of an Order by the Board amending the existing Special Field Rules for the Hatter's Pond Field (Order No. 75-134 as last amended by Order No. 82-91).

Said petition further seeks entry of an Order by the Board unitizing, pooling and integrating the Unit Area, as underlain by the above defined Unitized Formation, into one single unit so as to require all owners or claimants of royalty, overriding royalty, mineral, leasehold and all other interests within said unit to unitize, pool and integrate their interests and develop their lands or interests within the Unit Area as one single unit, and designating Getty Oil Company as the operator of said unit in accordance with the laws of the State of Alabama, and establishing an allowable for the Unitized Formation.

The proposed "Unit Area" (See Exhibit 1 in Appendix) consists of the following described lands in Mobile County, Alabama:

In Township 1 South, Range 1 West:

SE 1/4 of Section 27; S 1/2 of Section 28; All of Sections 33, 34 and 35.

In Township 2 South, Range 1 West:

All of Section 2, 3 and 4; SE 1/4 of Section 8; All of Sections 9 and 10; All that part of the NW 1/4 of the NW 1/4 of Section 11 lying West of the west right-of-way line of the St. Louis-San Francisco Railroad and all that part of the W 1/2 of the SW 1/4 of the NW 1/4 of Section 11 lying West of the west right-of-way line of the St. Louis-San Francisco Railroad; All of Sections 15, 16 and 17; that part of the NW 1/4 of Section 22 lying North and West of the west right-of-way line of Interstate Highway 1-65.

Findings

The Board having heard over 100 hours of testimony of all the witnesses and all parties desiring to be heard, having carefully examined over 400 Exhibits and other documentary evidence and having heard the arguments of counsel and being fully advised of the premises and after due consideration thereof, finds as follows:

1. That due, proper and legal notice of the hearing of said cause at these special sessions has been given in the manner and form and within the time provided by law and the rules and regulations of this Board and that Petitioner has fully complied with the Notice requirements of Rule 400-1-12-.10 of the *State Oil and Gas Board of Alabama Administrative Code*. Further, Petitioner has presented evidence that it made a diligent and extraordinary effort, at great expense, to provide notice to all interested parties by methods in addition to and beyond the requirements of said Rule 400-1-12-.10, including the following: mailing certified letters to interested parties; obtaining lists of

interest owners from the operator of Section 28, Township 2 South, Range 1 West and mailing notice to said owners; obtaining lists of interest owners in the Hatter's Pond Field by reviewing title opinion files and mailing notice to said owners; running advertisements in the *Mobile Press Register;* running an advertisement in the *Southeastern Oil Review;* and hiring an independent landman to post copies of the notice of this hearing in post offices, convenience stores, filling stations, and other places located in and near Hatter's Pond Field. Due and legal proofs of newspaper publication are on file with the Board and are part of this record. Proof and documentation of first class mailings and certified mailings are on file with the Board and are part of this record. The Board has full jurisdiction of this cause.

I.

NEED FOR UNITIZATION

The Hatter's Pond Field is one of Alabama's most significant gas-condensate fields in terms of quantity and value of hydrocarbons. It is a unique field in terms of structural and stratigraphic complexities that include faults, salt intrusions, lithologic changes, and large variations in porosities, permeabilities, and hydrocarbon pay thicknesses and distributions. These factors greatly influence both the amount of hydrocarbons beneath each tract and the abilities of wells to produce these hydrocarbons.

Within the Hatter's Pond Field, well drilling, completion, production, and maintenance costs are extremely high due to the great depths and hostile geologic environment to drilling and production. Production in this field is from a depth of approximately 18,000 feet. The high risk of operations at this great depth are most often related to mechanical problems resulting from high temperatures,

high pressures, and salt flowage. The unitization of the Hatter's Pond Field would, therefore, be advantageous for both primary and secondary recovery operations.

The Hatter's Pond Field produces hydrocarbons from two different formations or rock units. These are the Smackover Formation, which is primarily a carbonate, and the Norphlet Formation, which is primarily a sandstone. Both formations have distinct and often highly variable characteristics that result from their depositional and diagenetic histories. These characteristics include chemical compositions and variations in porosities, permeabilities, and water saturations, all of which affect the distribution of hydrocarbons within the reservoir. In addition, there are extreme variations in hydrocarbon pay thicknesses within the field, and these are related to the amounts of structural deformation as well as to porosity and permeability changes.

In support of the Petition before the Board to unitize the Hatter's Pond Field, Getty Oil Company (hereinafter referred to as Petitioner) presented evidence that included geologic exhibits, engineering and economic analyses, computer modeling studies, and testimony of expert witnesses. Petitioner avers that this field should be unitized and a gas cycling secondary recovery program should be implemented expeditiously in order to insure the continuation of orderly and proper development, avoid the drilling of unnecessary wells, protect correlative rights of mineral interest owners, and prevent waste.

An expert engineering witness for Petitioner testified that the results of a computer modeling study indicate that gas cycling, as a secondary recovery program, would be the most economical and beneficial method of continued production in the Hatter's Pond Field and that

this study also indicates that such a program will be successful (Getty Exhibit 13). The witness further testified that the characteristics of the producing formations in the field are suitable for partial pressure maintenance and enhanced recovery through the injection of residue gas, other unitized substances, or outside substances in the proper manner and method as proposed by Petitioner; and that the injection of such substances into the reservoir at strategic locations will result in the establishment of an adequate pressure maintenance and enhanced recovery program, which will result in the efficient production of hydrocarbons and a substantial increase in the yields and ultimate recovery of hydrocarbons.

An expert engineering witness for Petitioner maintains that unitization is in the interest of conservation and that the estimated total cost of conducting the secondary recovery operations will not exceed the value of the estimated total additional hydrocarbons to be recovered through enhanced recovery methods (Getty Exhibit 13-M). Petitioner contends that unitization is necessary in order that pressure maintenance and secondary recovery operations can be initiated and maintained in a complete and comprehensive manner; and that the producing formations must be unitized into a single, reservoir-wide unit in order to insure that injection is made at critical locations and that production can occur from the most strategic wells for the benefit of the hydrocarbon pool as a whole.

An expert engineering witness for Petitioner testified that unitization is necessary to prevent the drilling of unnecessary wells and will be advantageous because of the inherent drilling, completion, and production problems in the field (Getty Exhibits 15-20). Petitioner asserts that unitization will provide for the efficient recovery of hydrocarbons from the proposed unit area and is needed for both primary and secondary recovery operations, and that

unitization will also allow for the drilling of wells at optimum locations, regardless of present drilling unit boundaries, so as to increase the ultimate recovery of hydrocarbons and maintain balance and equity between tracts. Petitioner further contends that unitization will protect the correlative rights of mineral interest owners in the proposed unit area and will prevent the loss of recoverable hydrocarbons.

An expert engineering witness for Petitioner maintains that a delay in unitization will result in the irrevocable loss of hydrocarbons (Getty Exhibit HO-9), and that the enhanced recovery program of gas cycling or injection should be initiated well before the reservoir pressure has declined to the dew point in order to avoid retrograde condensation and any harm to the reservoir.

In support of Petitioner, a representative of Creola asserts that it is vital to the welfare of Creola and other royalty interest owners, as well the working interest owners and the State of Alabama, that the Hatter's Pond Field be promptly unitized and that a program of gas injection commence as soon as possible.

A representative of Mrs. Hazel Hinson Butler (hereinafter referred to as Mrs. Butler) stated that Mrs. Butler is in support of the petition.

Amax Petroleum Corporation (hereinafter referred to as Amax) stated no opposition to the concept of unitization and a representative argued that unitization is the best possible way to produce hydrocarbons from the Hatter's Pond Field.

A representative of N. Earl Baldwin, Howard M. Baldwin, William S. Baldwin, and Fred D. Baldwin (hereinafter referred to as the Baldwins), stated support for

the unitization of the field and the initiation of partial pressure maintenance and enhanced recovery operations that would be beneficial to all interest owners.

Representatives for Hatters Alabama Company and LeBoc Mobile Company (hereinafter referred to as Hatters/LeBoc) expressed agreement to the need for unitization so that a pressure maintenance program may be instituted.

A representative of George W. Radcliff (hereinafter referred to as Mr. Radcliff) stated that Mr. Radcliff was not opposed to unitization.

An expert witness for Richland Exploration Company, Inc. (hereinafter referred to as Richland) stated that the Hatter's Pond Field should be unitized and pressure maintenance be initiated as soon as possible.

T. K. Jackson III (hereinafter referred to as Mr. Jackson) stated that the Board has a duty to unitize the field.

Dr. George L. Wallace (hereinafter referred to as Dr. Wallace) favors the unitization of the field.

A representative of 150 small interest owners in Section 28, Township 2 South, Range 1 West (hereinafter referred to as Hildreth et al), stated that his clients were in agreement that unitization of the Hatter's Pond Field is appropriate.

Additionally, the Board has received numerous letters and statements of support from a wide cross section of interest owners in the Hatter's Pond Field that unitization is appropriate and necessary.

Findings

The Board has heard all the testimony and has carefully reviewed all evidence in regard to the need for unitization, and hereby finds:

2. That there is an unquestionable need for the Hatter's Pond Field to be unitized.

3. That no party presented evidence to refute Petitioner's averments that unitization of the Hatter's Pond Field is needed for the purpose of initiating and maintaining a partial pressure maintenance program.

4. That Petitioner, who operates all but one producing well in the Hatter's Pond Field, has been a prudent operator and would be the major operator with about 97.7 percent of the working interest ownership in the proposed unit area. Therefore, Petitioner should be designated as the initial unit operator, when a Unit Agreement is approved by the Board, with the exclusive right to conduct unit operations.

5. That unitization is necessary because of the unique geologic characteristics of the Hatterr's Pond Field and the hostile geologic environment for drilling and production evident therein. Unitization would be beneficial for the continuation of successful primary recovery operations and is needed for the successful initiation and maintenance of secondary recovery operations. Unitization is necessary in order to prevent the potential loss of recoverable hydrocarbons and in order to prevent the drilling of unnecessary wells in the proposed unit area.

6. That unitization of the Hatter's Pond Field is in the interest of conservation and that secondary recovery will result in an appreciable increase in recovery of hydrocarbons from said field. The increased recovery of hydrocarbons from the field is in the best interest of the mineral interest owners and the State of Alabama.

7. That Petitioner has clearly demonstrated the need to unitize the Hatter's Pond Field and initiate gas cycling secondary recovery operations as expeditiously as possible. An undue delay of unitization and the initiation of enhanced recovery procedures will result in the irrecoverable loss of hydrocarbons and potential harm to the reservoir.

II.

PARTICIPATION FORMULA

Pore Volume

Petitioner presented evidence that the tract participation formula for the proposed unit area should be based 100 percent on pore volume (See Exhibit 2 in Appendix). An expert geologic witness for Petitioner defines pore volume as the storage space in a rock expressed in porosity feet. The pore volume is determined by multiplying the net pay feet by the average porosity as measured and calculated for each foot of pay.

Petitioner maintains that the pore volume formula is consistent with Section 9-17-83, *Code of Alabama* (1975) which states that tract allocation shall be based on the relative contribution which each tract or interest is expected to make during the course of operations, to the total production of hydrocarbons as allocated.

Expert witnesses for Petitioner contended that the 100 percent pore volume formula is the best method for determining tract participation because it best represents what each individual tract in the proposed unit area can be expected to contribute to future production from the proposed unit. Petitioner asserts that a tract's contribution to past production is not important and that the determining factor should be a tract's contribution to future production. The determining factor should be what a tract, not a well in the tract, is expected to contribute to future production.

An expert engineering witness for Petitioner contends that 100 percent pore volume is the best method of allocation because of the hostile geologic environment to drilling and production in the Hatter's Pond Field, which has resulted in the drilling of numerous dry holes and the abandonment of several producing wells; therefore, the testing and completion procedures for wells in the field have been inconsistent, due to varying lengths of tests, different completion techniques, and different intervals perforated. The witness further stated that some wells are producing only from the Smackover Formation, and others only from the Norphlet Formation.

Petitioner contends that pore volume is the best participation formula for allowing a redetermination of each tract's relative contribution as new wells are drilled in the proposed unit area.

A representative of Creola testified that the 100 percent pore volume formula is the best method for determining the relative contribution for each tract in the proposed Hatter's Pond Field Unit.

Mrs. Butler supports Petitioner's 100 percent pore volume formula. Richland and Dr. Wallace did not make a statement in opposition to Petitioner's proposed formula for tract participation.

Several opposition parties assert that the 100 percent pore volume formula will not satisfy the requirement of Section 9-17-83 of the *Code* in that the allocation of production to each separate tract must be based upon the relative contribution which each tract is expected to make during unit operations. They maintain that, in order to protect correlative rights of mineral interest owners, the allocation formula must be altered.

Several opposition parties to the Petitioner's proposed formula contend that, under the proposed tract participation formula, certain tracts, including tracts 1500, 1700, and 3500, would receive less from unitization and enhanced recovery operations than they are presently receiving or would receive under continued primary recovery operations. Opposition parties maintain that the inequities of the Petitioner's proposed formula are highlighted by the fact that tract 1100, with no proven production by a well, would receive a higher participation percent than tract 1700, on which production has been proven by the drilling of a well. Therefore, opposition parties assert that the proposed unitization is not protecting the correlative rights of mineral interest owners, and that the proposed unitization is not in compliance with Section 9-17-82 of the *Code* which provides that unitization will not result in additional costs that exceed the value of the additional hydrocarbons that will be recovered. Amax contends that mineral interest owners in tract 3500 will receive less financial benefit from secondary recovery operations than under continued primary operations.

Expert witnesses for opposition parties testified that the heterogeneity and erratic nature of the Hatter's Pond reservoir, which consists of both a carbonate and sandstone unit having distinct geological and engineering characteristics, does not warrant having a participation formula based on one single factor (100 percent pore volume).

Several opposition parties maintain that the heterogeneous nature of the reservoir leads to inherent inaccuracies in the mapping of pore volume between the widely spaced wells in the field, and that these inaccuracies have been demonstrated by the drilling of wells which have encountered significantly different pore volumes that previously mapped for the well locations. They further contend that not a single example can be cited where a well encountered pore volume that matched the pore volume assigned to the well location prior to drilling. As a consequence of the inherent difficulties in accurately estimating pore volume, many states use other factors in the establishment of a participation formula. Opposition parties further assert that the demonstrated unpredictability of the reservoir of the Hatter's Pond Field substantiates the inaccuracy and unreliability of using any single factor as 100 percent of the participation formula.

Several opposition parties stated that the sparse density of actual pore volume data points (wells) available in the proposed unit area considerably limits the reliability in projecting pore volumes between the widely spaced wells in this field. They further contend that most unitizations on a fieldwide basis have been conducted for fields developed on a 40-acre spacing pattern which provides considerably more information about the characteristics of a reservoir and makes unitization on pore volume determinations much more reliable. The Hatter's Pond Field, a gas-condensate field, has been developed on a 640-acre spacing pattern.

Representatives for the opposition parties maintain that significant amounts of critical engineering and production history data are available for the Hatter's Pond Field and the use of a 100 percent pore volume formula totally ignores these types of data. The opposition parties assert that engineering data give insight into what is

present in the areas between wells and that the participation formula for many unitized fields has some engineering component.

Expert witnesses for the opposition testified that the proposed tract participation formula does not take into account nonrecoverable hydrocarbons; nonhydrocarbons, such as connate water, hydrogen sulfide, and carbon dioxide; product value of gas; or quality of gas.

Productive Surface Acres

Petitioner argues that a productive surface acre factor in the participation formula is not justified for the proposed unit area and that the highly variable reservoir thickness in the field makes productive surface acres an inappropriate factor because an acre with 1 foot of net pay should not be given the same credit as an acre with 300 feet of net pay. Petitioner further maintains that introducing a productive surface acre factor into the participation formula would not protect the correlative rights of the mineral interest owners in the proposed unit area.

A representative for Mr. Radcliff contends that as a consequence of the inherent difficulties in accurately estimating pore volume, many states use other factors, such as productive surface acres, in the establishment of participation formulas. Mr. Radcliff maintains that weight should be given to a productive surface acre factor in the participation formula. Mr. Radcliff further contends that a productive surface acre factor is necessary to protect the correlative rights of mineral interest owners in the proposed unit area. Given all the geologic uncertainties present in the Hatter's Pond Field, Mr. Radcliff maintains that the use of productive surface acres, as a factor in the determination of tract participation, would introduce some measure of certainty into the formula.

Productivity

Expert witness for Petitioner aver that past production does not determine what a tract's future contribution will be to the proposed unit and that a productivity factor is indicative of well contribution and not tract contribution. Petitioner contends that pore volume best represents what each tract in the proposed unit area can be expected to contribute to future production; and that pore volume, as mapped, is not 100 percent accurate. Petitioner, however, maintains that there is no method presently available which can predict future contribution with 100 percent accuracy. A representative for Petitioner maintains that pressure production histories of the wells in the field, and liquid content of fluid produced, gives an inaccurate estimate of what each tract in the proposed unit will contribute to future unit production because there are differences among the wells with respect to the thickness of pay encountered; the amount of pay perforated; the depth of the perforations; the type of acid treatment used; the dates of completion; the number of days produced; the length, size, and configurations of the tubing strings; the amount of scale buildup; the separator size; wellhead pressure; the size and length of flowlines; and the separator temperature. Petitioner contends that all these well-related factors affect past production history and/or liquid content of the fluid produced, and the variations in these factors from well to well make a comparison of the present production histories and the fluids produced from the various wells in this unit an unreliable method for predicting future contribution.

A representative for Petitioner argues that cumulative production does not take into account the variability of when wells were completed nor the days that the wells produced; and that cumulative production, as a factor in the participation formula, would not protect the correlative rights of the mineral interest owners.

Petitioner maintains that well capacity is a measure of well contribution, in that it exaggerates one particular area in each of the tracts that has a producing well on it. Further, Petitioner contends that there have been no tests run in this field to determine the "highest tested capacity" for wells capable of making their allowable.

A representative for Amax contends that a production history factor in the participation formula is necessary for the tract participation to be fair and equitable. He further stated that production history shows what a well will produce and what the tract will contribute, and that the use of production history for at least 50 percent of the formula would mitigate errors in estimates of pore volumes between wells.

A representative for the Baldwins contends that the participation formula should be balanced between well deliverability (a productivity factor) and pore volume. He further stated that the remaining reserves of the field can be determined by productive history and bottom hole pressure analysis, and that one of the most important single elements of what a tract can be expected to contribute is the ability of that tract to produce. An expert engineering witness for the Baldwins testified that production from a well indicates well performance and the nature of the producing formation that is exposed to the well bore. He maintains that production history is the most accurate factor in predicting what a tract will contribute to the total unit production, and that production can be measured. He contends that due to the variability of time intervals of continuous production for the various wells and the mechanical problems of some wells, a production per day factor could be appropriate for the proposed unit. A representative for the Baldwins asserts that in-place hydrocarbons have no value if they cannot be produced, that the rate and volume of production greatly affects the

total value of a tract, and that deliverability, or the ability of a given well (tract) to produce, is a measurable factor that should be given at least equivalent weight to pore volume in the determination of an equitable tract participation factor. He maintains that well deliverability reflects a tract's proven ability and capacity to contribute to unit production and a tract's productive quality and ability and, therefore, is a good measure of a tract's expected relative contribution toward unit production. He contends that the addition of deliverability to the tract participation formula will insure the protection of the correlative rights of the mineral interest owners in the proposed unit area.

Mr. Jackson advocates that an average daily production factor is a reasonable indicator of future contributions at the Hatter's Pond Field because the Petitioner has essentially been the sole operator of the field and has a fiduciary duty to see that each tract (well) is produced in an equitable manner.

A representative for Hatters/LeBoc maintains that the participation formula for the proposed unit needs to include 50 percent for highest tested capacity (a productivity factor), and 50 percent for adjusted pore volume. He stated that the highest tested capacity is a well's test for allowable purposes and should reasonably reflect the maximum productive capacity of a well. An expert engineering witness for Hatters/LeBoc testified that pressure-production history is important in determining what a tract may contribute to future production. He maintains that a capacity factor would help take into consideration the connate water that is not taken into consideration in the pore volume formula presented by Petitioner.

Findings

The Board has heard all of the testimony and carefully reviewed all of the evidence, and in regard to a

participation formula hereby finds:

8. That for the Hatter's Pond Field, a tract participation formula based 100 percent on pore volume does not protect the correlative rights of the mineral interest owners in the proposed unit area. This gas-condensate field has been developed on a 640-acre spacing pattern resulting in large distances between wells. Therefore, the wide distribution of wells in the field (which vary up to more than a mile) and the unpredictable variations in reservoir porosities and permeabilities do not allow for the accurate mapping of pore volume. Furthermore, the inequities resulting from a 100 percent pore volume formula would not be significantly reduced by the drilling of a few additional wells within the proposed unit area and the re-determination of tract participation by the remapping of pore volume from the data provided by these wells.

9. That the heterogeneity of the Hatter's Pond Field reservoir prevents the accurate determination of pore volume, and this fact has been clearly demonstrated by the inability to accurately predict the pore volume for wells. The demonstrated heterogeneous nature of the Hatter's Pond Field reservoir, and the proven inability to predict pore volume as new wells are drilled, requires the use of a factor in addition to pore volume.

10. That engineering production data available for the Hatter's Pond Field is not considered by using a 100 percent pore volume formula.

11. That productive surface acres, as a factor for tract participation in the proposed Hatter's Pond Field Unit, is not acceptable because of the drastic changes in reservoir thickness from one area of the field to another. Assigning equal participation values to a tract underlain by a few productive reservoir feet and a tract underlain by hundreds of

productive reservoir feet is not equitable and would not protect the correlative rights of the mineral interest owners in the proposed unit area. In the Hatter's Pond Field, productive surface acres as a factor in determining tract participation is not in compliance with Section 9-17-83 of the *Code* because productive surface acres is not a fair estimate of what each tract could reasonably be expected to contribute to future production.

12. That a fair and reasonable participation formula, and one that will protect the correlative rights of mineral interest owners in the proposed Hatter's Pond Field Unit, is a tract participation formula that is weighted in favor of pore volume, but which also includes a productivity factor.

13. That cumulative production is not appropriate as a productivity factor for the proposed Hatter's Pond Field Unit because it does not take into account the varying dates that wells commenced production and does not take into account the actual days that each well produced hydrocarbons. Therefore, a cumulative production factor would not protect the correlative rights of the mineral interest owners.

14. That well deliverability, as measured by a standardized capacity test, is not appropriate as a productivity factor for the proposed Hatter's Pond Field Unit due to the risk, cost, and time factors of conducting such tests. Therefore, a well deliverability factor would not protect the correlative rights of the mineral interest owners.

15. That a tract's average daily production rate, as determined from a well's best month of production on the tract, is appropriate as a productivity factor for the proposed Hatter's Pond Field Unit. This productivity factor, in proper combination with a pore volume factor, would more

accurately determine a tract's relative contribution than a pore volume factor alone.

16. That a fair and reasonable tract participation formula for a Hatter's Pond Field Unit is a formula that consists of a 60 percent pore volume factor and a 40 percent productivity factor. The productivity factor is defined as a tract's average daily production rate as determined from a well's best month of production on the tract. The productivity factor of the participation formula shall be determined prior to the effective date of unit operations within the unit area ultimately approved by the Board. Such a participation formula protects the correlative rights of interested parties, and is based upon the relative contribution which each tract or interest is expected to make during the course of unit operations. Section 9-17-83, *Code of Alabama* (1975).

III.
SUGGESTED PORE VOLUME ADJUSTMENTS

Lithologic Differences

Petitioner maintains that the Smackover and Norphlet Formations are one reservoir but are mapped separately because of differences in lithology and character, and that the Unitization Geological Subcommittee agreed to treat the Smackover and Norphlet in the same manner in regard to porosity and permeability. An expert witness for Petitioner contends that although the Smackover has four times the average permeability of the Norphlet, the wells perforated in the Norphlet are better producers than those perforated in the Smackover. He further stated that net pay thickness tends to be much greater in the Norphlet than in the Smackover. An expert engineering witness for Petitioner testified that the medium (lithology) in which porosity and permeability

exists does not effect these rock properties and that any affects that different lithologies would have on storage and movement of fluids are already taken into account in the measurements of the porosity and permeability (Getty Exhibit HO-18).

An expert geologic witness for Mr. Radcliff testified that Petitioner's unitization plan is the first he has observed where the unitized formation is composed of two different lithologies and that different reservoir characteristics create many problems. He maintains that porosity is higher in the Smackover than in the Norphlet and porosity varies greatly within each formation. He further stated that the Smackover has four times the average permeability of the Norphlet. All parties agreed that there are lithologic differences between the Smackover and Norphlet.

Net Pay Cutoffs

Petitioner asserts that the net pay cutoffs of 6 percent porosity and 0.1 millidarcy permeability for both the Smackover and the Norphlet were recommendations of the Unitization Geologic Subcommittee and that the net pay cutoffs are reasonaable for these rock units because cores from the field indicate communication across the Smackover-Norphlet contact. An expert engineering witness for Petitioner testified that fluid originally stored in 0.1 millidarcy rock will flow to the wellbore with relative ease, if there are more permeable flow paths available, as is the case in the Hatter's Pond Field (Getty Exhibit HO-18). Petitioner maintains that no party has offered any evidence that justifies using net pay cutoffs different from those agreed to by the Unitization Geological Subcommittee. An expert witness for Creola avers that the net pay cutoffs were agreed to by the Unitization Geological Subcommittee, and that the cutoffs are fair and reasonable.

Therefore, he contends that changes are unnecessary.

An expert geologic witness for Hatters/LeBoc testified that he agrees with Petitioner's net pay cutoffs for the Smackover, but maintains that the net pay cutoffs for the Norphlet should be 9 percent porosity and 1.0 millidarcy permeability as evidenced by the plugged and abandoned Getty Boyd 22-4 No. 1 well (Permit No. 2381-B). The Smackover was absent in the Boyd well and completion attempts in the Norphlet failed, even though some Norphlet net pay porosity was indicated to be present in the core for this well. Hatters/LeBoc contends that no substantial evidence has been presented to indicate that the Norphlet will contribute hydrocarbons from zones with 6 percent porosity and 0.1 millidarcy permeability. An expert geologic witness for Mr. Radcliff testified that he agrees with the net pay cutoffs proposed by Hatters/LeBoc and contends that Petitoner's pore volume map gives more credit to the less permeable Norphlet than is technically supportable. The Baldwins expressed opposition to Petitioner's net pay cutoffs but offered no recommended changes.

Water Saturation

An expert engineering witness for Petitioner testified that pore volume is the volume available for the storage of gas and the irreducible or connate water. He further maintains that the Unitization Geological Subcommittee considered and then decided against using water saturation. Petitioner contends that there would be uncertainties in the calculation of water saturation values, including the nonhydrocarbon constituents in the pore spaces of the formations and the different lithologies of the formations (Getty Exhibits HO-23 and HO-24), and that attempts to make the adjustments would not increase the accuracy of determining a tract's relative contribution.

Petitioner further asserts that this engineering witness is the only qualified log analyst to testify on this matter. Petitioner also maintains that none of the alternative formulas proposed by the opposition parties directly adjusts for connate water saturation. An expert witness for Creola testified that connate water increases toward the gas-water contact and probably increases with lower permeability. He further contends that the salt encountered in some of the wells effects the accuracy of water saturation determinations calculated from geophysical logs. Creola agrees with Petitioner that attempts to calculate connate water would not improve the accuracy of determining relative contribution.

None of the opposition parties offered any calculations as to the actual connate water present in any individual well in the proposed unit area. An expert witness for Mr. Radcliff testified that Petitioner's pore volume map is inaccurate primarily because it does not reflect the amount of connate water in the available pore space. He further contends that the connate water is considerably higher in the Norphlet Formation than in the Smackover. An expert witness for Hatters/LeBoc testified that the inclusion of a productivity factor in the participation formula could help offset Petitioner's failure to include water saturation. Mr. Radcliff recommends that water saturation adjustments be made only if the Radcliff proposed participation formula is not adopted.

Pressure-Production History, Remaining Recoverable Unitized Substances, and Present Worth of Unitized Substances

Petitioner maintains that pressure-production history, remaining recoverable unitized substances, and present worth of unitized substances adjustments to pore volume would not increase the accuracy of pore volume

determinations for the proposed unit area. Petitioner further contends that large variations among the wells with respect to the thicknesses of pay encountered; the amount of pay perforated; the depth of the perforations; the type of acid treatment used; the dates of completion; the number of days produced; the length, size, and configuration of the tubing strings; the amount of scale buildup; the separator size; the wellhead pressure; the size and length of the flow lines; and the separator temperature make these factors inappropriate as adjustments to pore volume.

An expert engineering witness for Hatter/LeBoc contends that adjustments for pressure-production history, remaining recoverable unitized substances, and present worth of unitized substances would increase the accuracy in the determination of pore volume. He maintains that, based on the pressure-production history of some wells, these is an indication that perforated intervals are in communication with less pore volume than what has been mapped by the Unitization Geological Subcommittee. He further stated that the Unitization Geological Subcommittee's mapping of pore volume does not take into account what each tract has already produced and what each tract could be expected to contribute to future production. He also asserts that due to the variations in the value of substances produced from wells, a present worth of unitized substances adjustment should be included.

Log Versus Core For Pore Volume Calculation in Tract 3500

Petitioner maintains that the decision not to include pore volume data from the Getty Creola Minerals 35-11 No. 3 well (Permit No. 3277) for determining the pore volume for tract 3500 is consistent with the Unitization Geological Subcommittee's recommendations. Petitioner further contends that the core data for the Getty Creola Minerals

35-11 No. 2 well (Permit No 2258) provides more accurate information for determining pore volume than the well logs for the 35-11 No. 3 well which was not cored.

Expert witnesses for Hatters/LeBoc and Amax testified that the Unitization Geological Subcommittee did not include pore volume estimates determined from the well logs for the 35-11 No.3 well. They contend that the well logs for the No. 3 well indicate higher pore volume than encountered in the core of the No. 2 well (Amax Exhibits P and Q).

Findings

The Board has carefully reviewed all testimony and evidence relating to suggested pore volume adjustments and hereby finds:

17. That the geologic and engineering evidence indicates that the affects of different lithologies on the storage and movement of hydrocarbons are already taken into account in the measurements of porosity and permeability in the Hatter's Pond Field. Therefore, the Smackover and Norphlet Formations should be given the same pore volume credit in regard to lithology alone.

18. That the weight of the geologic and engineering evidence indicates that net pay cutoffs of 6 percent porosity and of 0.1 millidarcy permeability in the Hatter's Pond Field, as proposed by Petitioner, are fair and reasonable. These net pay cutoffs adequately define the lowermost productive limits for the Smackover and Norphlet Formations in the proposed unit area. No opposition party presented any substantial evidence to refute Petitioner's contention that the porosity and permeability cutoffs are appropriate for the proposed unit. Furthermore, the failure to complete the Boyd 22-4 well (Permit No. 2381-B) as a commercial

producer from the Norphlet Formation is not sufficient evidence to justify a change in the net pay cutoffs for this formation, because this failure may have been related to conditions other than Norphlet porosity and permeability.

19. That the weight of the evidence indicates that an adjustment for water saturation should not be made because it would not improve the pore volume estimates of the hydrocarbons beneath each tract in the Hatter's Pond Field. No party presented any calculations on the actual connate water present in any well, and no party presented evidence to demonstrate that calculations of water saturations would improve the pore volume estimates of hydrocarbons beneath each tract.

20. That the weight of the evidence indicates that adjustments to pore volume for pressure-production history, remaining recoverable unitized substances, and present worth of unitized substances should not be made because these adjustments would not increase the accuracy of pore volume estimates of hydrocarbons or hydrocarbon value beneath each tract in the Hatter's Pond Field.

21. That in the mapping of pore volume for tract 3500 in the proposed Hatter's Pond Field Unit, Petitioner used the best available data for the determination of the pore volume attributable to said tract. Porosity and net pay thickness values are more accurate when determined from cores than from estimates based on calculations from wire line logs, especially for tract 3500 where two wells were drilled in close proximity.

IV.
MAPPING ASSUMPTIONS

Lack of Use of Wedge Zone on Salt Ridge

Petitioner maintains that the Unitization Geological Subcommittee recommended the use of a vertical salt face as the interpretation for the eastern boundary of the proposed unit area. Petitioner contends that this recommendation was the result of a compromise because adequate control to determine the exact location, shape, and slope of the salt wedge was not available. An expert witness for Creola maintains that the geologic mapping of the eastern edge of the proposed unit area was based on compromises made by the Unitization Geological Subcommittee. He further contends that the angle of the salt face could only be established in Section 15, Township 2 South, Range 1 West, and that the slope of the salt may vary in other areas along the eastern edge of the proposed unit area. An expert witness for the Baldwins agreed with Petitioner on the use of a vertical salt face. Several opposition parties had no objection to the use of a vertical salt face.

An expert witness for Mr. Radcliff maintains that the wedge zone of the salt ridge should be mapped and avers that Petitioner's pore volume map (Getty Exhibit 11) does not account for the western slope of the salt mass, thereby exaggerating the pore volume allocation to tracts situated along the eastern boundary of the proposed unit area.

Zero Porosity Limit

An expert witness for Petitioner testified that the productive limits for the Smackover and Norphlet Formations (Getty Exhibits 5 and 6) are based on gas-water contacts in the Norphlet Formation (Getty Exhibit 2). He

further contends that the Unitization Geological Subcommittee recommended that a projection of the Norphlet gas-water contact to the Smackover Formation would represent a reasonable down-dip productive limit of the Smackover. He further maintains that the gas-water contact projected from the Norphlet to the Smackover is lower than the lowest known gas seen in the Smackover in any well on the west side of the proposed unit area. Petitioner also contends that only Mr. Radcliff has recommended that these limits be changed. Expert witnesses for Petitioner assert that Mr. Radcliff's proposed zero porosity productive limit is technically inaccurate. These witnesses further maintain that Mr. Radcliff's productive limit runs through four dry holes.

An expert witness for Mr. Radcliff testified that the Smackover and Norphlet are separated by a nonpermeable section and that a water level cannot physically be projected from one formation into the other (Radcliff Exhibits 3 and 3A). He further contends that the Smackover has been found to be either porous and productive, or tight and non-productive. He, therefore, maintains that the down-dip limit of the productive Smackover Formation is controlled by a pinchout of Smackover porosity (Radcliff Exhibit 9).

Mapping More Pore Volume Than Present in Any Well

Petitioner contends that the Unitization Geological Subcommittee agreed not to map more net pay than present in any well and not to map more porosity than present in any well. Petitioner further maintains, however, that there was no agreement not to map more total pore volume than present in any well. Expert witnesses for Petitioner assert that the mapping of pore volume, which was not performed by the Unitization Geological Subcommittee, was accomplished by an appropriate mapping technique (i.e. combining net pay and porosity maps), and that this

technique is more accurate than mapping pore volume alone, especially since each formation is mapped separately. Creola supports Petitioner's mapping of higher net pore volume values than present in any well.

Several opposition parties maintain that the mapping of more pore volume than present in any well is not a proper mapping technique for determining tract participation for unitization (See Exhibit 2 in Appendix). An expert geologic witness for Mr. Radcliff testified that he would not advocate the mapping of higher pore volume than present in any well, and that, historically in unitizations, this mapping technique is never used. An expert engineering witness for the Baldwins testified that he has been involved in the unitization of fields in other states and that Petitioner's plan is the first time he has seen a committee map above a point that is the highest point encountered in a particular well bore, irrespective of the technique used by Petitioner to construct its pore volume map (Getty Exhibit 11).

Findings

The Board has carefully reviewed all testimony and evidence related to mapping assumptions and hereby finds:

22. That the weight of the evidence indicates that data are insufficient to accurately map the slope of the salt along the eastern boundary of the Hatter's Pond Field and, therefore, the use of a vertical salt face is acceptable.

23. That the weight of the available evidence, including data provided by dry holes and wells penetrating salt, supports Petitioner's interpretation of the productive limits of the Hatter's Pond Field, excluding the area of Section 21, Township 2 South, Range 1 West. Furthermore, Petitioner's projection of a gas-water contact for the Norphlet Formation to the Smackover Formation results in a

productive limit that is lower than the lowest known gas found in the Smackover, and this mapping technique is a fair and reasonable method of defining productive limits of the Hatter's Pond Field.

24. That the evidence clearly demonstrates that mapping of pore volume values higher than actually present in any well is not an acceptable mapping technique in the Hatter's Pond Field. The heterogeneous nature of the reservoir, and the documented failures of predicting pore volume, demonstrates that the mapping of pore volume higher than present in a well is inappropriate because these higher values are unproven to be present anywhere in the field.

V.

UNIT AREA

Sections 8 and 11, Township 2 South, Range 1 West and Sections 27 and 28, Township 1 South, Range 1 West

Petitioner avers that portions of Sections 8 and 11, Township 2 South, Range 1 West, and portions of Sections 27 and 28, Township 1 South, Range 1 West, should be part of the proposed unit area (See Exhibit 3 in Appendix). Expert witnesses for Petitioner testified that the geologic and engineering data derived from wells in, or near these sections, indicates that portions of said sections will contribute hydrocarbons to the proposed unit and should, therefore, be given a tract participation factor corresponding to each section's relative contribution even though said sections do not currently have a producing well thereon.

Petitioner maintains that the Unitization Geologic Subcommittee agreed that it is reasonaable to include portions of said sections in the proposed unit area and that

these partial sections would contribute production to the proposed unit. Petitioner contends that, although some of the opponents have questioned the tract participations for some of the tracts in the proposed unit area, no opposition party has requested that any of the said tracts be excluded from the proposed unit area.

Creola supports Petitioner's contention that portions of Sections 8 and 11, Township 2 South, Range 1 West, and protions of Sections 27 and 28, Township 1 South, Range 1 West, should be included in the proposed unit area and should be given a tract participation factor corresponding to each section's relative contribution to the proposed unit.

An expert geologic witness for Hatters/LeBoc interprets the productive limits in Section 11, Township 2 South, Range 1 West (Hatters/LeBoc Exhibit 1), in a manner similar to Petitioner's interpretation (See Exhibit 3 in Appendix).

An expert geologic witness for Mr. Radcliff interprets the productive limits in Section 11, Township 2 South, Range 1 West (Radcliff Exhibit 9), in a manner similar to Petitioner's interpretation. For Section 8, Township 2 South, Range 1 West, Mr. Radcliff's productive acreage outline map (Radcliff Exhibit 8) indicates that the productive limit extends significantly further to the west than the productive limit as shown by Petitioner's Exhibit 11.

An expert geologic witness for Richland interprets the productive limits in Sections 27 and 28, Township 1 South, Range 1 West (Richland Exhibits 4 and 5), in a manner similar to Petitioner's interpretation.

Expert geologic witnesses for Dr. Wallace interpret the productive limits in Sections 27 and 28, Township 1 South,

Range 1 West (Wallace Exhibit 1), in a manner similar to Petitioner's interpretation.

Sections 25, 26, and 36, Township 1 South, Range 1 West

Petitioner maintains that the structure and productive limits of the proposed unit area support the exclusion of Sections 25, 26, and 36 from said unit.

An expert witness for Petitioner avers that the Smackover and Norphlet Formations were absent in the Smith 36-5 well (Permit No. 2608) in Section 36, Township 1 South, Range 1 West, and that the Unitization Geological Subcommittee reviewed and considered the information from this well, in addition to the information from all other wells in the area, and determined that the productive limits for the Smackover-Norphlet Gas Pool in the Hatter's Pond Field area are as depicted by Petitioner (Getty Exhibits 5 and 6). Petitioner contends that these exhibits illustrate that all of Sections 25, 26, and 36 are structurally below the -18,300 foot productive limit line and are, therefore, entirely outside of the limits of production for the Smackover-Norphlet Gas Pool of the proposed unit area.

Dr. Wallace contends that a portion of Section 25, and portions of adjacent Sections 26 and 36, Township 1 South, Range 1 West, should be included in the proposed unit area. Expert witnesses for Dr. Wallace assert that portions of these sections are underlain by hydrocarbons and that these sections are being drained by one or more wells located in the proposed unit area; furthermore, that the exclusion of these sections from the proposed unit area is not based on hard geological data, but instead is based on a structural interpretation that does not take into account the tectonic influence of the salt and does not follow contouring procedures consistent with good mapping concepts and practices. Witnesses for Dr. Wallace further

contend that due to the substantial amount of past drainage and a wide diversity of ownership it would be economically wasteful and virtually impossible to drill a well in Section 25.

Expert witnesses for Dr. Wallace presented testimony and exhibits, including a structure map of the Smackover Formation (Wallace Exhibits 1, 1A, 1B, and 1C), and a structure map of the Norphlet Formation (Wallace Exhibit 2). Dr. Wallace maintains that these exhibits depict portions of Sections 25, 26, and 36 to be within the productive limit of the field as defined by the -18,300 foot structural contour. Expert witnesses for Dr. Wallace contend that the structural configuration of the Smackover (Wallace Exhibit 1) is much more elongated in a northeastward direction along the fault, than as interpreted by Petitioner (Getty Exhibit 5) or as interpreted by Richland (Richland Exhibit 4), thus indicating that the Smackover lies structurally higher than -18,300 feet in portions of Sections 25, 26, and 36. Expert witnesses for Dr. Wallace also presented testimony and exhibits to support their contention that reservior grade porosity is potentially present beneath Section 25. These exhibits include pore volume maps (Wallace Exhibits 3, 4, and 5), a Smackover porosity map (Wallace Exhibit 7), and a porosity cross section (Wallace Exhibit 8).

An expert witness for Richland testified that a portion of the Northwest quarter of Section 36, Township 1 South, Range 1 West should be included in the proposed unit. Richland contends that the information derived from a plugged and abandoned dry hole in the Northeast quarter of Section 36, the Stone Oil Corporations' Smith 36-5 (Permit No. 2608), in conjunction with the data from other wells in the northern part of the field, indicates that a portion of the Northwest quarter of Section 36 is underlain by the Smackover-Norphlet Gas Pool of the Hatter's Pond

Field area. An expert witness for Richland contends that the structural configuration (Richland Exhibit 4) of the Smackover Formation for the northern part of the proposed unit is more elongated in a northeasterly direction than the structural interpretation of Petitioner (Getty Exhibit 5). Richland's witness maintains that a portion of the Northwest quarter of said Section 36 is structurally above the -18,300 foot contour, which is above the productive limit in this part of the field (Richland Exhibit 4).

Sections 21, 22, 28, and 33, Township 2 South, Range 1 West

Petitioner avers that its proposal to unitize Hatter's Pond Field, even though it excludes two sections which are presently a part of the field (Sections 21 and 28, Township 2 South, Range 1 West), is in compliance with Alabama law which authorizes the unitization of a portion of a field. *See* Section 9-17-82, *Code of Alabama* (1975). Petitioner, therefore, maintains that there are no legal requirements to include either Sections 21 or 28, assuming that correlative rights are protected by an allowable scheme and inequities are not caused.

Expert witnesses testified for Petitioner that the Section 21 well (Getty Baldwin 21-7, Permit 2222-B) is completed in the same reservoir as the main part of the field. Petitioner avers that due to serious disagreement as to the geology in the area of Sections 21 and 22, the Unitization Geological Subcommittee members abandoned their efforts to map and interpret the geology of this area, and therefore, the geologic interpretation of Sections 21 and 22 is that of the Petitioner alone.

Expert witnesses for Petitioner maintain that the exclusion of Section 21 would not have any adverse effects on

the operation of the proposed unit, and they assert that the correlative rights of the interest owners in Section 21 will be protected by the proposed allowable plan. Petitioner stated plans to drill a production well just north of Section 21 and in the South half of Section 16, and an expert witness for Petitioner testified that this production well should create a no-flow boundary and that there should be no adverse effect on the Baldwin 21-7 well; and that if there was any effect, it would be to increase its recovery of hydrocarbons.

Expert witnesses for Petitioner contend that Section 28 is not a part of the main Hatter's Pond Field reservoir and that pressure communication between the Exxon Corporation Wilkie Gas Unit 28 No. 1 well (Permit No. 2746) and other wells in the field must be through a water leg, rather than the gas column, because their geologic interpretation indicates that a piercement salt ridge extends through adjacent Section 21 located north of the Wilkie Well. A representative for Petitioner stated that neither it nor Exxon Corporation, the operator of the Wilkie well, object to the exclusion of said well and that the correlative rights of all parties can be fully protected by the proposed allowable system (Getty Exhibit 24, pp. 7-12).

Petitioner maintains that attempts to include Sections 21, 28, and 33 into the proposed unit will delay unitization because the mapping of this area is disputed and because of the time that will be needed to evaluate the information obtained from the additional well (Getty Baldwin 21-15 No. 1 well, Permit No. 3697), currently being drilled in Section 21. Furthermore, a representative for Petitioner stated that the inclusion of these sections into the proposed unit would require a time consuming revision of the present plans for the gas cycling project.

The Baldwins, Hatters/LeBoc, Amax and Hildreth et al had opposition to Petitioner's proposed southern unit area boundary. The Baldwins testified that they support the concept of unitization. They stated, however, that they are opposed to Petitioner's proposed 100 percent pore volume participation formula for allocation of production to the separately owned tracts because inequities exist and thus they feel they have been forced to ask that Section 21, Township 2 South, Range 1 West, not be included in the proposed unit area. The Baldwins assert that Section 21 would be severely penalized under Petitioner's proposed 100 percent pore volume participation formula and maintain that a fair and equitable allocation formula would allow Section 21 to become part of a proposed unit which they advocate would be favorable for the protection of correlative rights. The Baldwins further maintain that the Unitization Geological Subcommittee abandoned efforts to map Section 21 and that subsequently acquired data from a 3-Dimensional seismic survey have enabled Petitioner to remap and revise the geologic interpretation of the southern area of the field, resulting in the permitting of a new well now being drilled in the South half of Section 21 (Getty Baldwin 21-15 No. 1 well, Permit No. 3697).

Hatters/LeBoc advocates the inclusion of Sections 21, 28, and 33 into the proposed unit area. They maintain that no evidence has been presented to the Board by which a determination can be made of the just and equitable share of gas production for the proposed unit as compared with the just and equitable share of gas production for Sections 21 and 28 and that the proposed allowable system does not represent a just and equitable allocation of production. Hatters/LeBoc also questions the accuracy of Petitioner's geologic maps of the Section 21 area and point out that Petitioner has proceeded with its petition for unitization even through new significant information was made

available by the completion of a 3-Dimensional seismic survey in the area prior to the November 1982 unitization hearing. They assert that Petitioner proceeded with its petition with the knowledge that the results of this seismic survey created doubt as to the accuracy of Petitioner's structural interpretation of the Section 21 area and doubt as to the existence of the salt ridge interpreted to be present in this section (Getty Exhibits 5 and 6).

Hatters/LeBoc further maintains that the maximum recovery of hydrocarbons will be realized only if the entire field area is unitized and that would be the most beneficial plan from an economic, engineering, and a conservation standpoint. They further assert that Section 28 will benefit from a gas cycling program and that the pressure information from the Exxon Wilkie 28 well (Permit No. 2746) indicates that the gas column in the Smackover Formation is in communication with the Smackover gas column in the main part of the reservoir to the north.

An expert engineering witness for Hatters/LeBoc testified that two adverse conditions could result from the exclusion of Section 21 and its producing well (Getty Baldwin 21-7, Permit No. 2222-B) from the proposed unit area. He maintains that some of the reinjected gas from the unit could be produced by the Baldwin 21-7 well to the detriment of most of the mineral interest owners in the unitized area, excluding Petitioner who has a large working interest ownership in this well. Further, he avers that the 21-7 well could experience an early breakthrough of dry injected gas from the proposed unit area, thus terminating the production of full well stream reservoir gas to the detriment of mineral interest owners in Section 21. The position of Amax is in agreement with Hatters/LeBoc's averment that the exclusion of the Baldwin 21-7 well from the proposed unit area could be detrimental to the mineral interest owners in the unit area.

Hildreth et al maintains that the proposed allowable plan for non-unit wells fails to protect the correlative rights of the mineral interest owners in Section 28 by not affording them their just and equitable share of production from this common gas pool. Hildreth et al contends that Petitioner's proposed Special Field Rules allocate to the Exxon Wilkie 28 well an allowable based on its percentage of the total number of surface acres in the developed drilling units. Hildreth et al further maintains that Petitioner has demonstrated that surface acres has no relationship to recoverable oil and gas beneath a tract, and that the available geological and engineering data confirms that the Wilkie 28 well is completed and producing from the same common pool as wells in the main part of the field and that the entire pool should therefore be unitized, including Section 28.

Findings

The Board has considered all of the testimony, exhibits and well data in order to ascertain if the following sections or portions of sections should be included in the proposed unit area and hereby finds:

Sections 8 and 11, Township 2 South, Range 1 West and Sections 27 and 28, Township 1 South, Range 1 West

25. That the weight of the geologic and engineering evidence supports Petitioner's averment that the Southeast quarter of Section 8 and a portion of the Northwest quarter of Section 11, Township 2 South, Range 1 West, and the Southwest quarter of Section 27 and the South half of Section 28, Township 1 South, Range 1 West, should be included in the proposed unit area. The inclusion of a portion of Section 11 (Getty Exhibit 11) is supported by a reasonable interpretation of the eastern boundary of the reservoir from the available well data in the vicinity of said section. The inclusion of a portion of Section 8 (Getty Exhibit 11) is supported by a reasonable interpretation of

the western boundary of the reservoir from the available well data in the vicinity of said section. The inclusion of a portion of Sections 27 and 28 in the proposed unit (Getty Exhibit 11) is reasonable and is evidenced by 7 feet of net pay and 0.7 porosity-feet of pore volume (Getty Exhibit 3) in the Getty Newman 28-10 No. 1 well (Permit No. 2325), located in the Southeast quarter of Section 28.

Sections 25, 26, and 36, Township 1 South, Range 1 West

26. That the Stone Smith 36-5 well (Permit No. 2608), located in the Northwest quarter of Section 36, Township 1 South, Range 1 West is a plugged and abandoned dry hole that failed to encounter the Smackover and Northlet Formations which are found to be productive of gas in sections located to the west and southwest of said Section 36, and that the information derived from the drilling and logging of the Smith well does not support the inclusion of any portions of Sections 25, 26, and 36 into the proposed unit area.

27. That the Smackover and Norphlet structural configuration and hydrocarbon productive limit in the northern part of the proposed unit, as demonstrated on Petitioner's Exhibits 5 and 6, are valid interpretations based on all available well data, and these maps were prepared in a manner which honored these data as well as influences of salt tectonics, and as such, were contoured in a manner consistent with good mapping concepts and techniques.

28. That no evidence has been presented to indicate that the gas-water contact lies any deeper than -18,300 feet in the northern part of the proposed unit area, and the data from wells in this part of the field clearly support the use of the -18,300 structural contour as the productive limit.

29. That Petitioner's mapping of the western edge

of the salt mass along the west sectional boundary of the Northwest quarter of Section 36, Township 1 South, Range 1 West has no affect or bearing on the fact that the -18,300 foot structural contour is located entirely outside of Sections 25, 26, and 36 and no affect on the productive limit of the field.

30. That the technical data and testimony does not establish that the Smackover and Norphlet Formations beneath any part of Section 36, Township 1, Range 1 West, are structurally higher than -18,300 feet, and no credible evidence was presented to indicate that a hydrocarbon bearing Smackover reservoir is present beneath Section 36.

31. That the presence of a fault in shallow wells to the north of Section 25, Township 1 South, Range 1 West does not establish or indicate a continuation of the Hatter's Pond Field structure into and north of said Section 25. No evidence has been presented to substantiate the presence of the Hatter's Pond Field structure or salt uplift along the fault and in a northerly direction beyond the defined proposed unit area as shown on Petitioner's Exhibits 5 and 6. Further, any interpretation of the presence of this salt uplift beneath any parts of Sections 25, 26, and 36, Township 1 South, Range 1 West, and any areas north of these sections, is highly speculative and unsupported by the evidence.

32. That the production history, high productivity, and pore volume of the presently producing Getty Creola Minerals 35-11 No. 3 well (Permit No. 3277), and the plugged and abandoned past producer, the Getty Creola Minerals 35-11 No. 2 well (Permit No. 2258), Section 35, Township 1 South, Range 1 West, does not indicate the drainage of hydrocarbons from beneath any portions of adjacent Sections 25, 26, and 36, especially since the mapping of pore volume does not unequivocally establish the

amount of hydrocarbons beneath any particular tract. Assertions that portions of these sections are presently being drained of hydrocarbons by the Creola Minerals 35-11 No. 3 well (Permit No. 3277), or any other wells, are unsupported by the evidence.

33. That a northeastward trend of Smackover bars and porosity zones in the Smackover Formation of the Hatter's Pond Field does not establish that reservoir grade zones of porosity are present beneath any portions of Sections 25, 26, and 36, Township 1 South, Range 1 West.

34. That no evidence was presented to substantiate or support a geologic interpretation that shows the Smackover structure to be more elongated to the Northeast than that shown on Petitioner's Exhibit 5.

35. That the weight of the evidence clearly supports the productive limit as established by Petitioner in the northern part of the proposed unit area and insufficient technical data was submitted to justify adding any portions of Sections 25, 26, and 36, Township 1 South, Range 1 West. The addition of any portions of these sections would unjustly dilute the mineral interests in those tracts which are proven by wells to be productive, and also those mineral interests in tracts indicated to be productive by substantial evidence and sufficient technical data; and, therefore, would not protect the correlative rights of the mineral interest owners.

Sections 21, 22, 28, and 33, Township 2 South, Range 1 West

36. That in order to insure the protection of correlative rights of mineral interest owners in Section 21, Township 2 South, Range 1 West, and mineral interest owners in the proposed unit area, the Getty Baldwin 21-7

well (Permit No. 2222-B) must be included within a unitized area.

37. That the weight of the evidence indicates pressure communication between the Exxon Wilkie 28 well (Permit No. 2746), Section 28, Township 2 South, Range 1 West, and the main part of the Hatter's Pond Field to the north; however, the evidence is inconclusive for a determination of the nature of this pressure communication.

38. That the testimony and exhibits raise serious doubts about the accuracy of the geologic mapping of Section 21, Township 2 South, Range 1 West, as shown on Petitioner's Exhibits 5 and 6, and demonstrate an unequivocal need for the area south of the proposed unit to be remapped by a committee of experts. Therefore, a committee of experts, including geologists, geophysicists, and petroleum engineers should be formed for the purpose of mapping Sections 21 and 28, Township 2 South, Range 1 West, and any extensions of the common gas pool therefrom, and also for the purpose of determining the nature of the pressure communication between the Exxon Wilkie 28 well (Permit No. 2746) and the wells located to the north of this well. Due to the fact that the Boyd 22-4 well (Permit No. 2381-B) in Section 22 lies in close proximity to Section 21, the information provided by this well and any other available data should be carefully examined by the committee to determine if it is necessary to revise in any manner the interpreted geologic structure and projected productive limit in Section 22, Township 2 South, Range 1 West, as displayed on Petitioner's Exhibits 5 and 6.

39. That the determination of the need to include any portions of Sections 28 and 33, Township 2 South, Range 1 West, within a proposed unit must await the Board's review of a technical evaluation of this area by a

committee of experts. It must be determined if any conditions exist that would necessitate the inclusion of Section 28, and any productive extension therefrom, into any unitized area of the field.

VI.

SPECIAL FIELD RULES, UNIT AGREEMENT, AND UNIT OPERATING AGREEMENT

The Petitioner submitted evidence that the Special Field Rules for the Hatter's Pond Field should be amended (Getty Exhibit 24).

The Petitioner testified that the Unit Agreement and Unit Operating Agreement (Getty exhibits 25 and 26) have incorporated the provisions of Section 9-17-83, *Code of Alabama* (1975) and that the Unit Agreement has been executed by at least 75 percent of the working interests and 75 percent of the royalty interests.

The Petitioner proposes that Article 11.1 (Enlargement of the Unit Area and Unitized Formation) of the Unit Agreement contain subparagraph (d) which requires "the written agreement to the enlargement (of the Unit Area) by at least sixty percent (60%) in interest of the royalty owners in the Unit Area prior to enlargement." Creola, in support of the Petitioner, avers that Article 11.1 subparagraph (d) of the Unit Agreement is valid and necessary to protect the correlative rights of such owners.

Hatters/LeBoc and the Baldwins testified that they oppose the inclusion of Article 11.1 subparagraph (d) in the Unit Agreement. These two parties contend that this provision would prevent the enlargement of the unit area, on an equitable basis, without the written approval of Creola and

other similarly aligned parties, even if the Board decided, upon evidence submitted, that there was a need for the enlargement of the unit area.

Findings

The Board has considered all of the testimony and exhibits pertaining to the proposed amendments to the Special Field Rules and to the proposed Unit Agreement and Unit Operating Agreement and hereby finds:

40. That the Special Field Rules for the Hatter's Pond Field should not be amended at this time and that the Special Field Rules heretofore adopted by Board Order No. 82-91 on May 14, 1982, shall remain in full force and affect.

41. That the Unit Agreement and Unit Operating Agreement should not be approved at this time but that Article 11.1 (Enlargement of the Unit Area and Unitized Formation) subparagraph (d) must be deleted from the final Unit Agreement.

ORDER

IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED by the State Oil and Gas Board of Alabama that the petition of Getty Oil Company, entered as Docket No. 8-19-821, be and hereby is remanded to the Petitioner. The Petitioner is ordered to immediately prepare a unitization proposal, including a Unit Agreement, a Unit Operating Agreement, and Special Field Rules consistent with the findings adopted herein.

IT IS FURTHER ORDERED that:

1. A committee of experts, including geologists, geophysicists, and petroleum engineers, be formed by

Petitioner for the purpose of mapping Sections 21, 22, and 28, Township 2 South, Range 1 West, and any extensions of the common gas pool therefrom, and also for the purpose of determining the nature of the pressure communication between the Exxon Wilkie 28 well (Permit No. 2746) and the wells located to the north of this well. All parties who are affected by the inclusion *vel non* of these sections shall have an opportunity to participate in the committee meetings.

2. Petitioner shall make a redetermination of tract participations based on the tract participation formula enunciated in the findings herein and on the unit area to be proposed. The redetermination shall also be based on the finding herein that mapping of pore volume values higher than actually present in any well is not an acceptable mapping technique for the unitization of the Hatter's Pond Field. All parties who are affected by said redetermination shall have an opportunity to participate in this procedure.

3. Petitioner shall submit monthly progress reports on unitization to the State Oil and Gas Supervisor. Petitioner is encouraged to commence the committee meetings on or before October 1, 1983.

4. Petitioner shall, in order to prevent waste and protect correlative rights, present a unitization proposal to the Board expeditiously. If such a proposal is not presented to the Board within a reasonable period of time, the Board may consider options including but not limited to a reduction in allowables for the Hatter's Pond Field.

5. Petitioner shall submit a new unitization petition to the Board, containing a new docket number, and such petition must fully comply with the notice provisions of Rule 400-1-12-.10 of the *State Oil and Gas Board of*

Alabama Administrative Code. Upon receipt of such petition, the Board shall immediately set a hearing for said Cause.

This Cause came on for hearing before a quorum of the Board consisting of The Honorable Gaines C. McCorquodale and The Honorable James G. Lee who were present throughout the hearing and heard testimony of all witnesses, the arguments of Counsel, and examined the documentary evidence adduced.

DATED AND ORDERED this 29th day of July, 1983.

STATE OIL AND GAS BOARD
OF ALABAMA

By:/s/illegible
Gaines C. McCorquodale, Acting Chairman

By:/s/ James G. Lee
James G. Lee, Member

ATTEST:

/s/Ernest A. Mancini, Secretary
Ernest A. Mancini, Secretary

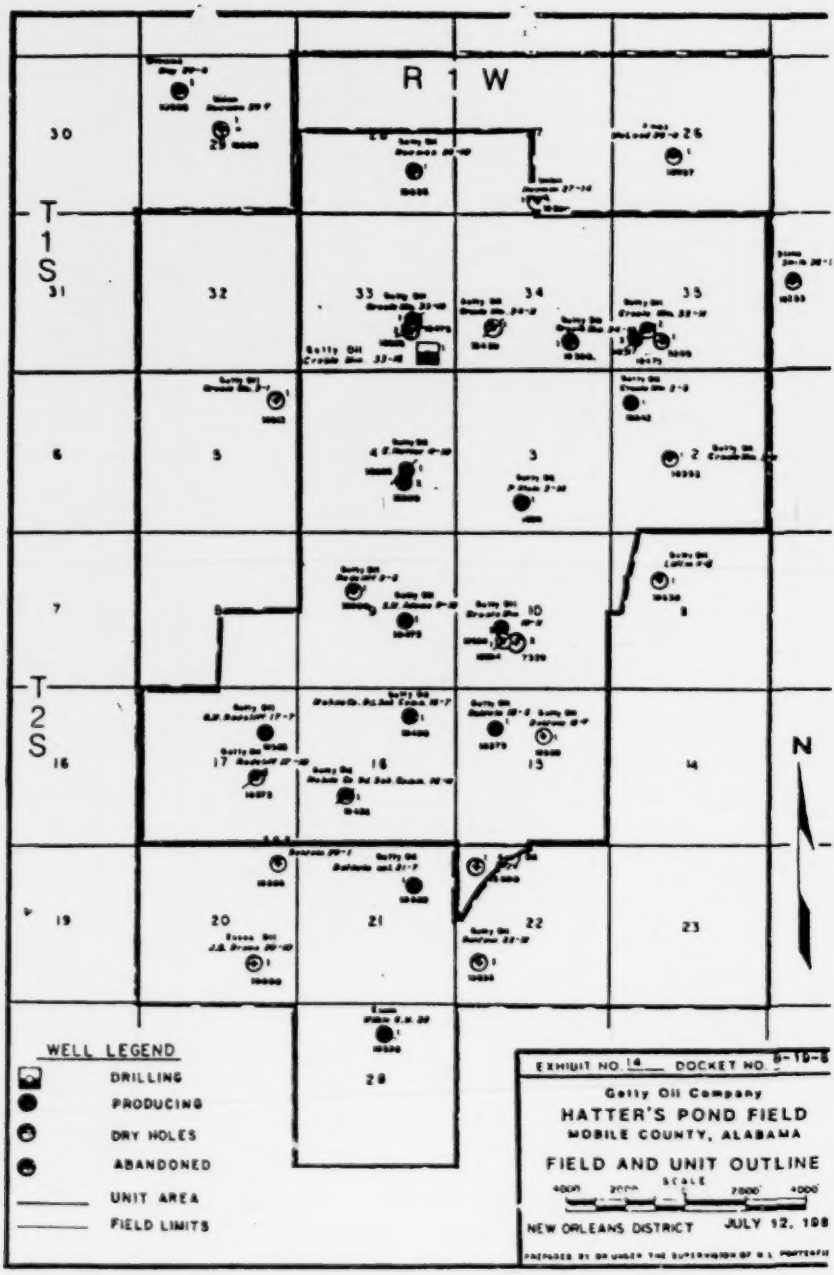

EXHIBIT 1

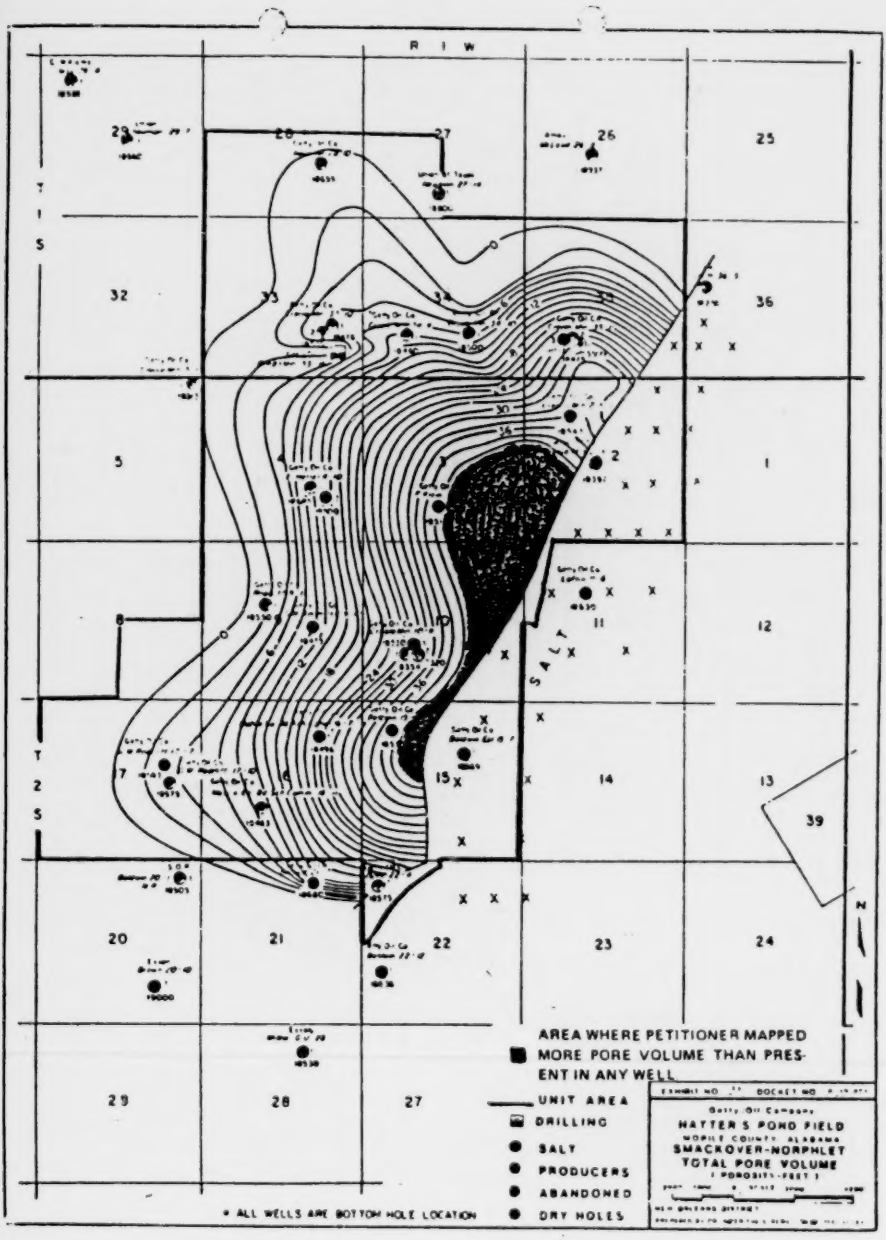

EXHIBIT 2

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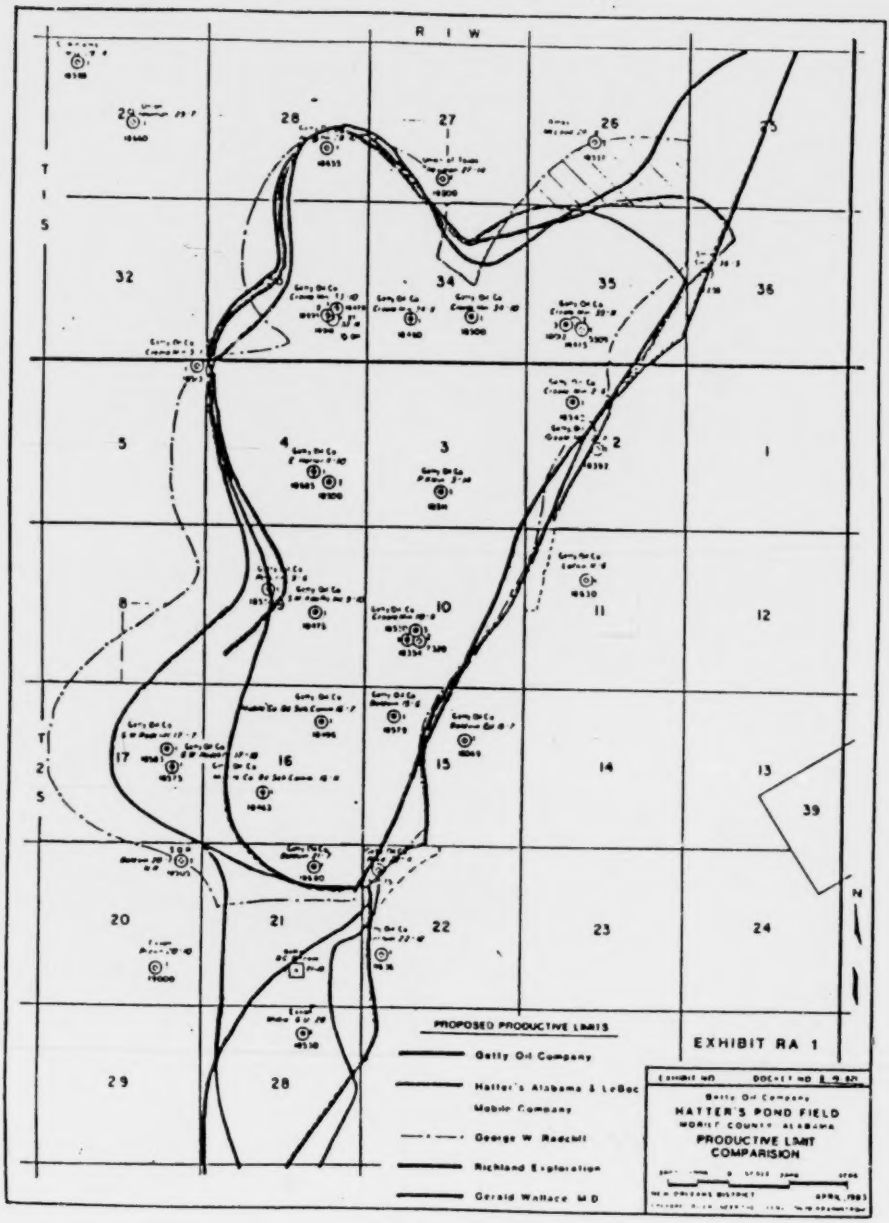

EXHIBIT 3

No. 87-577

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ARDEN A. ANDERSON, *et al.*,
Petitioners,

vs.

THE STATE OIL AND GAS BOARD OF ALABAMA, *et al.*,
Respondents.

PETITIONERS' REPLY BRIEF

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No. 87-577

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OCTOBER TERM, 1987

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vs.

THE STATE OIL AND GAS BOARD OF ALABAMA, *et al.*,
Respondents.

PETITIONERS' REPLY BRIEF

Petitioners' submit this reply brief under Supreme Court Rule 22.5 to address the issues and arguments first raised in the briefs of respondents State Oil and Gas Board of Alabama (Board) and Getty Oil Company (Getty).

EFFECT OF ORDER NO. 83-170

Prior to the petition leading to the adverse ruling of the Board which led to this Petition for Writ of Certiorari, there was another petition involving the same subject matter. The Board and Getty attempt to attach importance to that fact.

They allege that because of the earlier petition (leading to Board Order No. 83-170[1]) the requests for discovery by Arden A. Anderson, et al. in the second petition were dilatory.

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[1] Appendix A of Getty's Brief in Opposition.

The effects of Board Order No. 83-170 on the petition giving rise to this action were argued interminably by Getty during the hearings and at all levels of appeal. However, neither the Board itself, nor three reviewing courts, used that Order to preclude issues or to deny Anderson relief.

Because the Board noticed into the record in the second hearings all the testimony introduced in the first hearings, that evidence was preserved; *but* the Board allowed all parties to put in new evidence to support or refute the evidence entered in the first hearings.

The Circuit Court of Tuscaloosa County by Writ of Mandamus, required the Board to hear Anderson's request for discovery, in the face of and despite Getty's defense that Order No. 83-170 precluded it.

The Circuit Court of Mobile County, on appeal, found as a fact[2] that over 90 days elapsed from Anderson's first request before the first day of substantive hearings, and that over 200 days elapsed before the Board ruled on the request.

The Court of Civil Appeals of Alabama, while finding that due process rights of Anderson had not been denied, did so on the single premise that

> ... [T]he required production of the information sought by appellees [Anderson] would not necessarily have changed the Board's decision.[3]

Nothing in Board Order No. 83-170 jurisdictionally precluded Anderson's requests, and the chronological facts do not establish any form of laches or inequitable conduct on the part of Anderson.

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[2] Petitioners' brief p. A-21

[3] Petitioners' brief p. A-11

DISCRETION IN DISCOVERY MATTERS

Both respondents, in an attempt to show that this is a narrow issue governed by discretion, make several assertions pregnant with context to mislead.

The Board wrote:

> Virtually all discovery requests filed by petitioner during the Board hearings were produced.[4]

Getty wrote:

> It must be remembered that this case involves a denial of a few out of many discovery requests - *not* a denial of discovery.[5]

These respondents apparently would have this Court to understand that Anderson was denied a select few of its requests, which was in the discretion of the Board. What they fail to state is that Anderson was never granted any *compulsory* discovery. And at the time, the Board in its history had never granted anyone *compulsory* discovery.

An enormous volume of information was fed in to the record, but *nothing* came from the files of Getty that *Getty* in *its* discretion didn't furnish voluntarily.

Getty replies, concerning Anderson's request for depositions:

> Regarding Petitioners' request for oral depositions, Getty voluntarily complied by making three witnesses available (BR 101097). Consequently, there was no need for the Board to order depositions to be taken.[6]

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[4] Board's brief p. 7

[5] Getty's brief p. 11

[6] Getty's brief p. 4

This statement has important omissions: a) that Getty partially complied, three months after the request, and only after the Circuit Court had issued Mandamus to the Board; b) that the "depositions" were closed to all other parties so that they could not be used as evidence in the hearings; and c) the documents requested for review at the "deposition" were previewed by Getty and culled to remove important papers.

As with all other purported "discovery" in this case, Anderson was able to see, hear and obtain only what *Getty* wanted Anderson to have and when *Getty* wanted them to have it.

To characterize that as "discovery" requires a novel definition of the word.

SUMMARY OF REPLY BRIEF ARGUMENT

It would be difficult to imagine a case more substantial; where the stake (four billion dollars) is greater; where the constitutional issue is more basic; where the petitioner more carefully preserved the right of review of the issue.

Respectfully submitted,

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